

(2020) 05 JH CK 0019

In the Jharkhand High Court

Case No : Writ Petition (PIL) No. 1327 Of 2020

Arun Kumar Singh

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 05-05-2020

Acts Referred:

Citation : (2020) 05 JH CK 0019

Hon'ble Judges : Dr. Ravi Ranjan, CJ; Sujit Narayan Prasad, J

Bench : Division Bench

Advocate : Shruti Shrestha, Rajiv Ranjan, Rajiv Sinha

Final Decision : Dismissed

Judgement

Dr. Ravi Ranjan, CJ

1. With consent of the parties, hearing of the matter has been done through video conferencing and there is no complaint whatsoever regarding the visual/audio connectivity.

2. The instant writ petition has been filed by way of Public Interest Litigation seeking direction upon the State of Jharkhand to stay the operation of Circular No. 13/P-8003/2013-1595 dated 28.04.2020, as contained in Annexure 2 to this writ petition, issued under the signature of Additional Chief Secretary, Government of Jharkhand, whereby and whereunder, transfer and posting of various officers of IPS cadre has been made on mass scale in the State of Jharkhand, till the present pandemic situation of Covid-19 is in existence, since inter-district travelling during this period can pose serious threat of spreading the pandemic in the entire State and for a further direction upon respondent nos. 1 and 2 to direct the officers of various IPS cadre who have been transferred vide Circular No. 13/P-8003/2013-1595 dated 28.04.2020 to observe the mandatory guidelines of undergoing quarantine of 14 days issued by the Ministry of Health & Family Welfare, Government of India as also to comply with the guidelines of Indian Council of Medical Research of mandatory screening and check up in the

event the officers have travelled inter-districts for the purposes of joining. Further relief has been sought for a direction upon respondent nos. 1 and 2 to restrain themselves from further passing any mass transfer order in the event of no exigency, till the pandemic Covid-19 is spread in the State of Jharkhand so as to avoid further burden on the exchequer.

3. Ms. Shruti Shrestha, learned counsel appearing for the petitioner has submitted that during increase of Covid-19 pandemic, the transfers are highly unwarranted and it appears that such circular transferring 35 officers of IPS cadre has been issued without considering the fact that during the course of lockdown inflicted by the Ministry of Home Affairs, Government of India as the movement from one district to another is prohibited to put check upon the pandemic and if such transfer order will not be stayed, there would be movement from one district to another, which will not only be contrary to the guidelines issued by the Ministry of Home Affairs, Government of India rather the same will increase the threat of spreading the Covid-19. Further submission has been made that such transfer order is not in administrative exigency as would appear from the notification of transfer as impugned in the writ petition. It has been submitted during course of argument by placing prayer no.(b) of the writ petition that respondent nos. 1 and 2 must ensure of issuing proper direction upon the transferred IPS officers to observe mandatory quarantine of 14 days, as has been directed by the Ministry of Health and Family Welfare, Government of India.

4. Learned Advocate General, appearing on behalf of the State of Jharkhand, has raised preliminary objection about the maintainability of Public Interest Litigation as according to him the Public Interest Litigation will not lie in the service disputes. He further submits that so far as observance of the guidelines issued by the Ministry of Health and Family Welfare, Government of India (in short "MOHFW") is concerned, it goes without saying that the Government is taking care of such issues in order to put check upon the pandemic. Further objection pertaining to instant Public Interest Litigation is that the writ petitioner has not disclosed as to how he is aggrieved with such transfer order as the petitioner has simply made statement to the effect that he is a practicing advocate of Civil Courts, Seraikella- Kharsawan and works socially for various causes of the society pro bono but no such detail of pro bono and no other parameter showing the locus of the writ petitioner has been given for filing the instant Public Interest Litigation. As such, this writ petition is fit to be dismissed.

5. This Court having heard learned counsel for the parties and before delving with the issue, deems it fit and proper to refer to the judgment rendered by Hon'ble Apex Court in the case of Ashok Kumar Pandey v. State of W.B., reported in (2004)3 SCC 349 , wherein, at paragraph nos. 5 to 16 it has been held as under:

"5. It is necessary to take note of the meaning of the expression "public interest litigation". In Stroud's Judicial Dictionary, Vol. 4, 4th Edn., "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."

6. In Black's Law Dictionary, 6th Edn., "public interest" is defined as follows: "Public interest.-Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, State or national Government."

7. In Janata Dal case⁵ this Court considered the scope of public interest litigation. In para 53 of the said judgment, after considering what is public interest, the Court has laid down as follows: (SCC p. 331)

"53. The expression 'litigation' means 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 expression '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."

8. In paras 60, 61 and 62 of the said judgment, it was pointed out as follows: (SCC p. 334)

"62. Be that as it may, it is needless to emphasise 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 be primarily ascertained at the threshold."

9. In para 98 of the said judgment, it has further been pointed out as follows: (SCC pp. 345-46)

"98. While this Court has laid down a chain of notable decisions with all 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."

10. In subsequent paras of the said judgment, it was observed as follows: (SCC p. 348, para 109)

"109. It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have a 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 oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the court for vindicating any personal grievance, deserves rejection at the threshold."

11. It is depressing to note that on account of such trumpery proceedings initiated before the courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of 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 and facing the gallows under untold agony, 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, detenus 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 the glare of publicity break the queue muffling 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 court never moves, which piquant situation creates frustration in the minds of genuine litigants and resultantly, they lose faith in the administration of our judicial system.

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This extract is taken from Ashok Kumar Pandey v. State of W.B., (2004) 3 SCC 349 : (2011) 1 SCC (Cri) 865, at page 357 :

12. 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 armoury of law for delivering social justice to 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. As indicated above, court must be careful to see that a body of persons or a member of the public,

who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases, with exemplary costs.

13. The Council for Public Interest Law set up by the Ford Foundation in USA defined "public interest litigation" in its Report of Public Interest Law, USA, 1976 as follows:

"Public interest law is the name that has recently been given to efforts that provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary marketplace for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others."

14. 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; and (c) the information being not vague and 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; 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.

15. Courts must do justice by promotion of good faith, and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. (See *State of Maharashtra v. Prabhu*⁹ and *A.P. State Financial Corpn. v. Gar Re-Rolling Mills*¹⁰.) No litigant has a right to unlimited draught on the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. [See *Buddhi Kota Subbarao (Dr) v. K. Parasaran*¹¹.] Today people rush to courts to file cases in profusion under this attractive name of public interest. They must inspire

confidence in courts and among the public.

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16. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public interest litigations where even a minuscule percentage can legitimately be called public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in Duryodhan Sahu (Dr) v. Jitendra Kumar Mishra¹² this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the courts should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforesaid so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts."

(Emphasis supplied)

6. Further, in the case of B. Singh (Dr.) v. Union of India, as reported in (2004)3 SCC 363 the Hon'ble Apex Court decided the issue on the same line and held that Public Interest Litigation is not maintainable in service matters.

7. In the case of Gurpal Singh v. State of Punjab & Ors., as reported in (2005)5 SCC 389 the Hon'ble Apex Court again held that the Public Interest Litigation is not maintainable in service matters.

8. Further, in the case of Neetu v. State of Punjab, as reported in (2007) 10 SCC 614, the Hon'ble Apex Court has held as follows:

"The scope of entertaining a petition styled as a Public Interest Litigation, locus standi of the petitioner particularly in matters involving service of an employee has been examined by this Court in various cases.

Referring to the decisions rendered in the case of Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra, as reported in (1998)7 SCC 273 and in the case of Ashok Kumar Pandey v. State of W.B. (supra), the Hon'ble Apex Court held that Public Interest Litigation in service matters is not maintainable."

9. Further, in the cases of B. Singh (Dr.) v. Union of India (supra), Dattaraj Nathuji Thaware v. State of Maharashtra, as reported in (2005) 1 SCC 590 and Gural Singh (supra) it has been laid down that except for a writ of quo warranto, Public Interest Litigation is not maintainable in service matters.

10. This Court after referring to the aforesaid judgments rendered by Hon'ble Apex Court is of the view that Public Interest Litigation will not lie in service matters as service matters are essentially in between the employer and employee and it would be for the State to take action under the Service Rules and no Public Interest in such matters can be held to be maintainable.

11. Learned counsel for the petitioner, during course of argument, has submitted that the order of transfer is being questioned on the ground of pandemic Covid-19 and the concern of the petitioner is that if such transfer would be allowed to be executed, large number of officers would be allowed to move from one district to another, which will be nothing but in contravention of the guidelines inflicting lockdown and that is the reason specific prayer has been made at prayer no. 1(b) of the writ petition to direct such officers to observe mandatory guidelines by going mandatory quarantine of 14 days, issued by the Ministry of Health and Family Welfare, Government of India.

12. Upon such argument and specific prayer made to this effect, learned Advocate General appearing on behalf of the State of Jharkhand has submitted that services of police personnel and the officers, if found necessary to be transferred from one place to another for proper functioning of the Government and if the transfer order is being made, there is no question that the protocol of the guidelines would be flouted. He submits that in the garb of lockdown, government functioning cannot be put on hold and the State Government considering the necessity of transfer has issued order of transfer and, as such, there is no illegality warranting interference by this Court in the order of transfer, as impugned in the writ petition.

13. Learned counsel for the petitioner has submitted at this juncture that if the State of Jharkhand is making statement before this Court that the guidelines pertaining to lockdown, if required, would be followed, the writ petition may be disposed of.

14. This Court after considering the aforesaid submission and taking into account the first prayer, which pertains to stay of operation of the circular dated 28.04.2020, transferring 35 officers of IPS cadre from one place to another, is of the considered view that the proposition as has been settled by the Hon'ble Apex Court in the aforesaid judgments, Public Interest Litigation questioning the order of transfer will not be maintainable and, therefore, there is no reason to accede

to the prayer made in this writ petition, showing interference with the impugned order of transfer by issuing direction of stay for the reason that there is no threat of non-observance of the guidelines pertaining to lockdown, as has been submitted by the learned Advocate General that if required, the guidelines pertaining to lockdown, as has been notified by the Union of India as also the State of Jharkhand will be followed.

15. Therefore, this Court is of the view that this writ petition is not required to be entertained. Accordingly, the same is dismissed, however, with an observation that the guidelines pertaining to lockdown shall be adhered to.