

(2020) 10 SHI CK 0159

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 7264 Of 2012

Bhuvnesh Chand Sood

APPELLANT

Vs

State Of H.P. & Ors

RESPONDENT

Date of Decision : 16-10-2020

Acts Referred:

Constitution Of India, 1950 — Article 21
Himachal Pradesh High Court Public Interest Litigation Rules, 2010 — Rule 3, 4, 9
Land Acquisition Act, 1894 — Section 3, 4, 5
Indian Contract Act, 1872 — Section 229

Citation : (2020) 10 SHI CK 0159

Hon'ble Judges : Tarlok Singh Chauhan, J; Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Sanjeev Bhushan, Rajesh Kumar, Ashok Sharma, Vinod Thakur, Shiv Pal Manhans, Seema Sharma, Bhupinder Thakur, Yudhvir Singh Thakur, Bhupender Gupta, Janesh Gupta, Vikas Rathore

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J

1. The petitioner claims to have filed this petition as probono publico wherein it is averred that the 5th respondent, somewhere in the year 1989-90, when he happened to be the Chief Minister of the State, formed a Trust in the name of "Vivekanand Medical Research Trust", which according to the petitioner was a dream shown to the residents of Kangra District, more particularly, Palampur, regarding the setting up of multi speciality hospital exactly on the line of the Post Graduate Institute of Medical Education and Research, Chandigarh, having all facilities for heart, kidney, lungs etc.

2. The meeting of the said Trust was held on 17.11.1992 and the same was presided over by the then Financial Commissioner-cum-Secretary, Health to the Government of Himachal Pradesh, wherein it was decided that the Trust be registered under the Society Registration Act, 1860.

3. As per the knowledge of the petitioner, the Trust was got registered on 06.12.1992. After 1992, when the 5th respondent was not the Chief Minister of the State but had become the Union Minister, started building a multi faculty hospital, which enthuse the people of the area, that free and easily accessible medical facilities in multi faculty hospital would be available to them. But when the same was established, the people of the area felt cheated and a fraud has been committed upon them by not establishing charitable hospital but a commercial hospital, that too, contrary to the provisions of Indian Trusts Act (for short the "Act"). Not only this, even the nature of the land which was earlier classified as 'Tea Garden' was illegally changed to 'Banjar Qadim' i.e. land not cultivated for six seasons.

4. In addition thereto, the land which otherwise belonged to National Biological Research Institute was illegally transferred in the name of the State Government and thereafter in the name of the Trust overnight.

5. Above all, the Trust entered a memo of understanding with the Jai Parkash Seva Sansthan, and the Trust was comprising of 15 members, out of which 9 members belong to Jai Parkash Industries, which was a business venture.

6. Lastly, it is averred that on the influence exercised by respondent No. 5, a large chunk of land was leased out at the rate of Rs.1/- per year for 99 years vide order of the FC-cum-Secretary (Health) to the Government of Himachal Pradesh.

7. It is in this background, the instant petition has been filed for the grant of following substantive reliefs:-

"(i) That a writ in the nature of mandamus may be issued directing some independent agency to enquire the entire episode of formation of trust and the other illegalities as committed by the trust starting from the lease deed uptill the formation of Kayakalp.

(ia) That a writ in the nature of mandamus may be issued and the transfer of land comprising in Khata No. 11 min, Khatauni No. 35, Khasra Nos. 424/210, 426/213 and 427/213 in the name of State of Himachal Pradesh may very kindly be declared as null and void as the same has been transferred from Council of Science and Industrial Research without following due process of law.

(ib) That a writ in the nature of mandamus may be issued and the change of nature of above said land from Tea Garden to Banjar Kadim may very kindly be declared as null and void.

(ii) That a writ in the nature of mandamus may be issued directing independent agency that suitable action may be taken against the erring officials who have helped the formation of such illegal trust.

(iii) That a writ in the nature of mandamus may be issued directing the State to take over the entire property of the trust and run the same itself for the purpose

it was formed.

(iv) That a writ in the nature of mandamus may be issued directing the authorities concerned to initiate appropriate criminal proceedings against the erring persons for breach of trust of the local people."

8. Authorities of the State i.e. Secretary (Home), Secretary (Health) and Secretary (Revenue) have been arrayed as respondents No. 1 to 3 and have filed their joint reply wherein Preliminary Submissions have been made to the effect that the present petitioner has no locus standi to file and maintain the instant petition for want of jurisdiction, as the matter pertains to intricate questions of facts which require to be proved by leading evidence and, therefore, the present petition is liable to be dismissed on this score alone.

9. On merits, it has been averred that the State Government during the year 1992, decided to set up State Level Multi Speciality Hospital at Village Holta, District Kangra through Vivekanand Medical Care, Education & Research Trust, for which land was to be provided on lease basis by the State Government under the scheme in force at that relevant time.

10. It has been admitted that the land comprising Khata No. 7 min. Khasra Nos. 424/210, 426/213, 427/213, Khas 3 area measuring 16-14-01 hectares situated in mohal Holta was in the name of National Biological Research Institute. It was averred that the inspection of Girdavari of said land was conducted on 30.04.1992 and as per report/order of AC Ist Grade, Palampur, the nature of land was recorded as "Banjar Qadim" instead of Tea Garden. On 01.05.1992 vide mutation No. 21, the above said land was vested in favour of State of Himachal Pradesh. Out of 16-14-01 hectares, land comprising Khasra No. 424/210, 426/2013, 427/2013 Khas 3 area measuring 16-05-05 hectares was leased in favour of the Vivekanand Medical Research Trust, Palampur vide lease deed at the rate of Rs.1/ per year for 99 years.

11. Respondent No. 4 - Trust has filed reply wherein in the preliminary submissions issues regarding the locus standi, maintainability, the petitioner having not approached this Court with clean hands, the petition has been filed with mala fide intention and ulterior motives, the petitioner is guilty of suppressio varie and suggestio falsie by making false and reckless allegations, have been raised.

12. On merits, it has been submitted that a Trust was set up in the year 1992 for establishing a multi speciality hospital under the name and appellation of Vivekanand Medical Care, Education and Research Trust with Dr. Pratap Reddy of Apollo fame as professional medical trustee, to play pivotal role in the trust owing to his previous valuable experience in the filed. It is also admitted that the Secretary (Health) to the Government of Himachal Pradesh, was the Chairman of that Trust. However, it cannot be inferred from this arrangement that the Trust was meant to be controlled mainly by the government officials. It is further averred that since no substantial action was taken on the ground for 8 years, the

Apollo people lost interest and, thus, the project was virtually abandoned. However, some altruistic people like respondent No. 5 were keen to pursue the idea of creating a multi-faculty medical institution at or near Palampur and picked up the thread but found that the Apollo people had become un-interested and virtually abandoned the project, therefore, he strove to organize a trust with the help of some humanitarian persons of the region. These efforts culminated in the founding of the Trust known as Vivekanand Medical Research Trust on 11.09.2000.

13. As regards the Trust becoming a commercial venture, the same has been emphatically denied and it is claimed that the tariff charged is far lower to the similar kind of institute located in Bangalore and Pune. That apart, free treatment is given to the poor people and concessions are being given to the people belonging to the BPL, Antyodaya families.

14. As regards the lease and trust deed, it is averred that the trust deed was registered on 11.09.2000 and immediately thereafter the trust applied for lease which was finally signed on 03.03.2001 i.e. after a period of more than five months. The revenue records reflect that the names of the Government of Himachal Pradesh and Health Department are entered in the column of ownership and possession and the same was classified as "Banjar Qadim". Since respondent Trust was founded in the year 2000 and the corrections in the revenue records were carried out prior to its formation, therefore, the petitioner cannot be permitted to make capital of such change. It is averred that when the possession of the land handed over to the respondent after lease, no Tea Garden was in existence and the nature of the land was recorded in the revenue as "Banjar Qadim".

15. For completion of record, we may notice that an application for impleadment of the Council of Science and Industrial Research, Palampur, (for short 'CSIR') as party-respondent was filed by the petitioner and in reply thereto the CSIR has set out how it becomes initially the owner of the land and how the same was transferred to other institutes like H.P. Krishi Vishwa Vidalya presently known as SCK Himachal Pradesh Krishi Vishwavidalaya, Kendriya Vidalaya, H.P. Housing Board etc. It is averred that the Government of Punjab had issued Notification under Section 4 of the Land Acquisition Act, 1894 on 04.01.1996 which was published in the official gazette on 14.01.1966 for acquisition of 12,396 kanals 1 marla of land in Tikka and Mauza Banuri, Bharmat Upperli, Jhalred, Holta, Tehsil Palampur, District Kangra, for the purpose of setting up of National Biological Research Institute. Palampur. The said land was acquired by the Collector Kangra, District Kangra vide award dated 08.07.1996 for setting up of National Biological Research Institute, Palampur. In pursuance to the award of the Collector, the compensation amount was deposited with the Land Acquisition Collector, Kangra. After the re-organization of the State of Punjab, Kangra District was added to the State of Himachal Pradesh and the compensation paid to the owners and occupants of part of the acquired land by the Revenue

Assistant and was duly deposited in the Government Treasury and the owners and the occupants received the said compensation.

16. It is further averred that the establishment of National Biological Research Institute was later on dropped and in the year 1978 the part of the property was handed over to the Regional Research Laboratory, Jammu, now re-named as Indian Institute of Integrative Medicine (IIIM) another unit of CSIR for research etc. The replying respondent wanted to establish a laboratory with wider objective and research programme and therefore, it established its complex at Palampur in the year 1983 known as CSIR complex, which was subsequently named as Institute of Himalayan Bio-resource Technology (IHBT), Palampur. Various portions out of the acquired land were allotted by the State of Himachal Pradesh to different parties. Some land was given for setting up H.P. Krishi Vishwavidalaya presently known as CSK H. P. Krishi Viswavidalaya, Palampur, measuring 236 acres (95-43-95) hectares) which was owned by National Biological Research Laboratory (CSIR) out of this 7 acres of land had been given to the H.P. Housing Board and 21 acres of land was given to Kendriya Vidyalaya, Palampur. In addition to this, 1.004 acres of land was given to the Army for path and 0-65-77 hectares was retained for public path. Therefore, 186.2 acres of land was given to NBRI (CSIR) which was the left out area out of 236 hectares meant for research laboratory. In this behalf, letter dated 10.08.1978 of Deputy Commissioner, Kangra to Secretary Revenue to the Government of H.P. and letter dated 26.08.1978 from Deputy Secretary (Revenue) to Deputy Commissioner, Kangra and letter dated 04.03.1991 sent by the Deputy Commissioner, Kangra, to Sub Divisional Officer (Civil), Palampur and the representation given by Administrative Officer, CSIR, Palampur to the Settlement Officer, Kangra dated 04.05.1991. The mutation in the name of CSIR, Palampur was entered on 30.07.1980 in respect of the acquired land including the land comprised in Khasra No. 424/210, 426/213, 427/213 measuring 16-14-01 hectares in mauza Holta, Tehsil Palampur, District Kangra. It is further averred that since the replying respondent was not aware of the vesting of this land in favour of the replying respondent in pursuance to the award or the vesting thereof in favour of the State Government or leasing out the same to the Trust, the replying respondent, at this stage, is not in a position to comment on the same. However, it is true that Vivekanand Memorial Trust has set up Vivekanand Medical Research Trust and "Kayakalap" on the land comprised in aforesaid three khasra numbers, having come to know of the fact that the land in dispute belongs to CSIR and that it has subsequently vested in the State Government who leased out the same in the name of the Trust.

17. We may, at this stage, observe that the petitioner despite this petition being pending since 2012, has not tried to controvert the contents of any of the replies filed by the respondents by filing rejoinder(s).

We have heard learned counsel for the parties and have gone through the records of the case.

18. It is contended by Mr. Sanjeev Bhushan, learned Senior Advocate, duly assisted by Mr. Rajesh Kumar, learned Advocate, that the trust deed executed in violation of the provisions of the Act and is, thus, illegal. It is further contended that the founders of the trust had shown the desire for the formation of the charitable trust and further shown willingness of contributing their properties for the purpose of corpus of the trust, which is a requirement of law as per Section 3 of the Act but founder of the Trust created a camouflage to show that they have donated their properties whereas the same was not done as none of the founder members had donated the property for initial corpus.

19. Mr. Sanjeev Bhushan, learned Senior Advocate, has also invited our attention to Section 5 of the Act, to contend that the trust deed does not contain even a single word regarding the compliance of provisions of Section 5 of the Act

20. Sections 3 and 5 of the Act, reads as under:-

"3. Interpretation clause-"trust"- A "trust" is an obligation annexed to the ownership of property and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner:

"author of the trust", "trustee"; "beneficiary";, "trust property", "beneficial interest"; "instrument of trust" -The person who reposes or declares the confidence is called the "author of the trust"; The person who accepts the confidence is called the "trustee"; the person for whose benefit the confidence is accepted is called the "beneficiary"; the subject-matter of the trust is called "trust property" or "trust money"; the "beneficial interest" or "interest" of the beneficiary is his right against the trustee as owner of the trust property; and the instrument, if any, by which the trust is declared is called the "instrument of trust";

"breach of trust"- A breach of any duty imposed on a trustee, as such, by any law for the time being in force, is called a "breach of trust";

"registered", expressions defined in Act 9 of 1872 - And in this Act, unless there be something repugnant in the subject context, "registered" means registered under the law for the registration of documents for the time being in force; a person is said to have "notice" of a fact either when he actually knows that fact or when, but for wilful abstention from inquiry or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent, under the circumstances mentioned in the Indian Contract Act, 1872, section 229 and all expressions used herein and defined in the Indian Contract Act, 1872, shall be deemed to have the meanings respective attributed to them by that Act."

5. Trust of immovable property -No trust in relation to immoveable property is valid unless declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or by the will of the author of

the trust or of the trustee.

Trust of moveable property- No trust relating to movable property is valid unless declared as aforesaid, or unless the ownership of the property is transferred to the trustee.

These rules do not apply where they would operate so as to effectuate a fraud."

21. We have considered the submissions and find no merit in the same. Firstly, Section 3 of the Act is only in the nature of interpretation-clause and nothing more. Secondly, we found that the founders of the trust have donated their properties to the trust as the previous trust had a different entity and its property could not have been taken over by the new trust and treated as their own corpus. Thirdly, even the allegations of camouflage are totally unsubstantiated. Fourthly, the petitioner has failed to prove how the trust has been created contrary to the provisions of the Indian Trusts Act. Fifthly, the provisions of Section 5 of the Act are relevant to only to the stage of inception or establishment of trust and not to any subsequent stage; And lastly, respondent trust is a public trust as contra-distinguished from a private trust, hence, the provisions of Indian Trusts Act are not applicable to public trust.

22. It is next contended by Mr. Sanjeev Bhushan, learned Senior Advocate, that respondent No. 5, who was then the Chief Minister by exercising influence, got huge chunk of land measuring 99 hectares, leased in favour of the trust at the rate of Rs. 1/- per year for 99 years. Not only this, all the formalities were completed within a period of six months and ultimately the lease deed between the government and the trust was signed on 03.03.2001.

23. We again find no merit in this contention. The mere fact that the authorities have done the work with requisite promptitude cannot be a ground to casts suspicion on the working of the respondents.

24. As regards the grant of lease, the same has duly been explained in the reply filed by the CSIR (supra). We do not find any "hanky panky", as is alleged by the petitioner in the execution of the lease deed, more particularly, when the NBRI has given land to different parties like H.P. Krishi Vishwavidalaya presently known as CSK H. P. Krishi Viswavidalaya, Palampur, H.P.

Housing Board and Kendriya Vidyalaya etc.

25. In addition to the above, we find the stand of the petitioner to be suspicious and not above board because in case the government would have granted lease on the market value, obviously, the cost of the lease alone would runs into several lacs/crores, making it difficult for the trust to extend the facility of multi specialty hospital to the poor, BPL and Antodaya people.

26. Learned counsel for the petitioner would then claim that the government in order to help the trust have illegally changed the entry of the land from Tea Garden to "Banjar Qadim" over night.

27. Even this contention is without merit. The 5th respondent was nowhere in picture when the correction was carried out, as it had not even been founded on that date. This belated challenge after more than two decades of correction, that too, in absence of any procedural or legal infirmity and after the land(s) having been transferred to various Universities, Boards etc. cannot be countenanced.

28. Now adverting to the last contention of the learned counsel for the petitioner that out of 15 trustees, 9 belong to the business family of the Jai Parkash group. We really do not find how that itself can affect the legal character of the trust. Learned counsel for the petitioner has failed to point out any provisions of the Indian Trusts Act or any other law which bars members of business family from becoming members of a trust.

29. Noticeably, it was pursuant to memorandum of understanding with Jai Parkash Seva Sansthan, the nominees have been inducted in the trust against the existing vacancies and some in place of other trustees, itself has not changed the character of the trust into a commercial one. It is on account of the finances that were made available, that the trust could expand its activities and set up a super speciality hospital with an Associated Medical College and Nursing College, as stated in the reply filed by the fourth respondent.

30. We may at this stage notice that when the case was taken up by this Court on 14.04.2019, the petitioner again made a submission that after transfer of the land to the Trust, no actual hospital has been set up at the spot, constraining this Court to pass the following orders:-

"Since a stand is being taken on behalf of the petitioner that after transfer of the land to the Trust, no actual hospital has been set up at the spot and such a stand is being strenuously disputed by the respondents, let the Health Department, Himachal Pradesh, file a latest status report with regard to the infrastructure of the hospital and the facilities created, especially for the common men/residents of Himachal Pradesh. The photographs of the hospital and its infrastructure, if any, be also placed on record."

31. In compliance to the aforesaid order, the official respondents filed a status report on the affidavit of the Special Secretary (Health), the relevant portion whereof, reads as under:-

a. That it is submitted respectfully that the Vivekananda Medical Research Trust (VMRT), Palampur was registered as Trust on 10.09.2000. It is submitted further that for the construction and commission of two health institutions i.e. Kaya Kalap and Hospital Vivekananda Medical Institute, the Trust generated resources through generous public donations. A 90 bedded (Ayush Hospital Kayakalp) was constructed with about 14,638 sq. feet area in the year, 2005. The hospital is serving general public through nature care, Panchkarma, Physiotherapy, Yoga, Acupressure, Megneto-Therapy and Meditation etc. This hospital is the only NABH (National Accreditation Board for Hospitals & Health Care Providers) Accredited Ayush Hospital in the State of Himachal Pradesh and is also ISO 9001/2015

institution. This institution has already served more than Rs.30,000 patients. Apart from this, hospital offers rebate and facility to Antodaya, BPL and Senior citizens by providing them discounted treatment. The details of Kayakalp-Ayush Hospital is as under;-

Sr. No.

Description

Detail

1.

Total area of construction

Approximately 14,638 sq. feet

2.

Year of commencement of operation

1.11.2005

3.

Total No. of functional beds

90

4.

Total No. of operation specialists and their names

5-Naturopathy Panchkarma, Physiotherapy, Yoga, Meditation

5.

Total No. of Doctors.

07

6.

Total No. of Therapist

28

7.

Total No. of other staff

49

8.

Average No. of OPD/Day

15/ Day

9.

Average No. of IPD/Day

40/ Day

10.

Approximate No. of patients served till date

32200

11.

No. of BPL benefitted till date

20

12.

No. of Antodaya benefitted till date

138

13.

No. of Sr. Citizens benefitted till date

6383

14.

No. of free camps organised till date

34

15.

Award/appreciations

Best Yoga & Naturopathy Research Institute of the year 2015 by health care excellence summit and ISO 2015 certified organisation and also NABH Accredited Ayush Hospital.

b. That it is submitted respectfully that a Multi Speciality Hospital was also started by the Vivekananda Medical Research Trust in the year, 2012 with a construction area of 1,78,917 sq. feet. This is providing 17 operational facilities including ICU, NICU and Spinal Surgery facility. This multi speciality hospital has already benefitted more than one lac patients and 21,738 surgeries have been performed till date. This hospital has provided treatment on discount to about Rs.18,000 patients belonging to BPL and Antodaya categories.

c. That the staff details of Vivekananda Medical Institution is as under:

CONSULTANTS

- i. Internal Medicine & Critical Care
- ii. Nurosurgery
- iii. Padetrics and Neonatology
- iv. Anesthesia & Critical Care
- v.Orthopaedetics& Joint Replacement
- vi. Obstratics & Gynaecology
- vii. General & Leproscopic Surgery
- viii. Radiology & Imaging
- ix. Non Evasive Cardiology
- x. Dental
- xi. Opthamology
- xii. Casual Medical Officers
- xiii Physician Assistant

03

01

02

02

01

02

02

01

01

03

01

02

10

PARA MEDICAL STAFF

- i. Dialysis Technician
- ii. OT Technical
- iii.Radiology Technician

- iv. Lab Technician
- v. Physiotherapist
- vi. Dietetics

02

03

05

05

02

02

NURSING STAFF

78

NON-CLINICAL STAFF

- i. Hospital Operation
- ii. HR
- iii. Front Office
- iv. Finance & Control
- v. BMS
- vi. food & Beverages
- vii. BME

02

02

12

03

01

01

01

OUTSOURCE STAFF

- I. GDA/House Keeping/Security/Gardner/ Mess/Electrician/Plumber

95

TOTAL

295

In addition to above, the details of infrastructure/staff in VMI Multi-speciality Hospital, is as under;-

Sr. No.

DESCRIPTION

DETAIL

(i)

Total area of construction

Approximately 1,78,917 sq. feet

(ii)

Tear of commencement.

23rd July, 2012

(iii)

Total number of functional beds

57

(iv)

Total number of operation specialities and their names

17 (Internal Medicines & Critical Care, General & Laproscopic Surgery, Neuro & spine Surgery, Orthopaedics & Joint Replacement, Pediatrics & Neonatology, Obstetrics & Gynecology, Dental Care, Non Invasive Cardiology, Ophthalmology, Radio diagnosis, Anesthesia, Urology, dialysis, Dietetics and Nutrition, Laboratory Medicines, Rheumatology

(v)

Total number of specialists

17

(vi)

Total number of Medical & other staff

13+111

(vii)

Total number of other staff

80

(viii)

Average No. of OPD/Day

115 to 120/day

(ix)

Average No. of IPD per day

35/day

(x)

Approximate No. of patients served till date

1,36,096

(xi)

No. of BPL benefitted till date

About 9000

(xii)

No. of Antodaya benefitted till date

About 9000

(xiii)

No. of Senior Citizens till date

(xiv)

No. of Free camps organised till date

More than 300

(xv)

Special mentions/facilities that are extended by VMI but are not available in near vicinity of Palampur

(xvi)

Total No. of surgery performed till date

Approximately 21, 738

d. That in compliance to the directions of this Hon'ble Court the photographs of the Hospital and its infrastructure has also been obtained through Chief Medical Officer, Kangra which are voluminous and as such, a complete Album thereof will be produced before this Hon'ble Court at the time of taking up this case. However, the copies of few photographs are appended with this status report as Annexure R-1 (Colly).

3. That in view of the report submitted by the Chief Medical Officer, Kangra at Dharamshala, it is clear that Vivekananda Medical Institute and Ayush Kayakalap are rendering good medical and allied services to the people.

32. Noticeably, the petitioner made no endeavour to controvert or rebut the contents of this affidavit.

33. We have deliberately referred to the pleadings of the parties in extenso so as to enable us to come to the conclusion whether the petitioner has filed the instant petition in the larger public interest.

34. We may observe that there is no material whatsoever placed on record by the petitioner whereby it can be inferred that he is a *pro bono publico* or that the petition has in fact been filed in public interest. Rather, if one would go through the entire petition, it would be evident that the element of public interest is conspicuously absent.

35. What we can, therefore, *prima facie*, infer is that the petition has been set up as a dummy and the petitioner has, therefore, indulged in public mischief for oblique motive and in such circumstances the Court has to act ruthlessly while dealing with such imposters, busybody and meddlesome interlopers impersonating as public spirited holy men. The petitioner cannot masquerade as crusader of justice and is only pretending to act in the name of *pro bono publico*, though he has no interest in the public to protect. The instant petition has been filed under ploy for achieving oblique motives.

36. It is more than settled that merely because a petition is styled as a "Public Interest Litigation" but in fact is nothing more than a camouflage to foster personal disputes or vendetta and the petitioner in fact is a proxy litigant the same cannot be regarded as a Public Interest Litigation. There has to be a real and genuine public interest involved in a litigation and there must be concrete and credible basis for maintaining a cause before the Court and not merely an adventure of knight errant borne out of wishful thinking. Only a person acting bonafide and having sufficient interest in the proceedings 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(s) for personal gain or private profit or any other oblique consideration.

37. 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 public interest seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to the citizens.

38. The attractive brand name of Public Interest Litigation cannot be allowed to be used for suspicious products of mischief. This has so been held by the Hon'ble Supreme Court in its various pronouncements and the same have been repeatedly reiterated and followed by this Court in a batch of writ petitions, CWP

No.7249/2010 titled 'Devinder Chauhan Jaita versus State of Himachal Pradesh and others', being lead case, decided on 03.12.2014, another batch of writ petitions, CWP No.9480/2014 titled 'Vijay Kumar Gupta versus State of Himachal Pradesh and others', being the lead case, decided on 09.01.2015, CWP No.2775/2015 titled 'Anurag Sharma and another versus State of Himachal Pradesh and others', decided on 07.07.2015, CWP No.328 of 2016 titled 'Lala Ram and others versus State of H.P. and others', decided on 01.03.2016, CWP No.4838 of 2015 titled 'Ali Mohammed versus State of H.P. and others', decided on 16.03.2016, CWP No.4240 of 2015 titled 'Om Prakash Sharma versus State of H.P. and others', decided on 19.04.2016 and CWP No.3131 of 2014, titled 'Dr.J.S.Chauhan versus State of H.P. and others', decided on 06.05.2016.

39. The issue regarding public interest litigation has elaborately been dealt with by this Court in CWP No.9480 of 2014, titled 'Vijay Kumar Gupta versus State of H.P. and others', decided on 09.01.2015 (supra) and after taking into consideration the entire law on this subject this Court laid down the following parameters for permitting litigation in public interest:-

"29. From the aforesaid exposition of law, it can safely be concluded that the Court would allow litigation in public interest only 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 or any other legal right and relief is sought for its enforcement;

(ii) That the action complained of is palpably illegal or malafide and affects the group of persons who are not in a position to protect their own interest or 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 or a meddlesome inter- looper and have not approached with mala fide intention of vindicating their personal vengeance or grievance;

(v) That the process of public interest litigation was not being abused by politicians or other busy bodies for political or unrelated objective. Every default on the part of the State or Public Authority being not justiciable 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 judicial 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 misused by any unscrupulous litigant, politicians, busy body or persons of groups with mala fide objective or either for vindication of their personal grievance or by resorting to black-mailing or considerations extraneous to public interest."

40. The concept of a public interest litigation and its object was explained by three Hon'ble Judges' Bench of the Hon'ble Supreme Court in Jaipur Shahar Hindu Vikas Samiti vs. State of Rajasthan and others (2014) 5 SCC 530 wherein it was observed as under:

"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 down trodden 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."

41. To similar effect is another judgment of the Hon'ble Supreme Court in Environment and Consumer Protection Foundation vs. Union of India and others (2017) 16 SCC 780 wherein it was observed as under:

"29. Why are the Action Plan and these directions necessary? We seem to be forgetting the power of Public Interest Litigation and therefore need to remind ourselves, from time to time, of its efficacy in providing social justice. Many years ago, this Court noted in People's Union for Democratic Rights v. Union of India (1982) 3 SCC 235 that : (SCC p. 240, para 2)

"2...Public interest litigation is brought before the court not for the purpose of

enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large numbers of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed. That would be destructive of the rule of law which forms one of the essential elements of public interest in any democratic form of Government."

A little later in the judgment, it was said: (SCC pp.242-43, para 3)

"3....Millions of persons belonging to the deprived and vulnerable sections of humanity are looking to the courts for improving their life conditions and making basic human rights meaningful for them.

They have been crying for justice but their cries have so far been in the wilderness.

They have been suffering injustice silently with the patience of a rock, without the strength even to shed any tears."

30. The advantage of public interest litigation is not only to empower the economically weaker sections of society but also to empower those suffering from social disabilities that may not necessarily be of their making. The widows of Vrindavan (and indeed in other ashrams) quite clearly fall in this category of a socially disadvantaged class of our society.

31. Placing empowerment in perspective, this Court noted in *State of Uttaranchal v. Balwant Singh Chaufal* (2010) 3 SCC 402 that (at SCC p. 427, para 43) the first phase of public interest litigation concerned itself primarily with the protection of the fundamental rights under Article 21 of the Constitution of "the marginalized groups and sections of the society who because of extreme poverty, illiteracy and ignorance cannot approach this Court or the High Courts." We may add - the socially underprivileged groups. These are the people who have no real access to justice and in that sense are voiceless, and these are the people who need to be empowered and whose cause needs to be championed by those who advocate social justice for the disadvantaged.

32. This recognition formed the basis of the decision of this Court in *Delhi Jal Board v. National Campaign for Dignity & Rights of Sewerage & Allied Workers* (2011) 8 SCC 568 wherein providing succour to the deprived sections of society was recognized as a "constitutional duty" of this Court. Referring to several judgments delivered by this Court, it was observed: (SCC p. 590, para 31)

"31. These judgments are a complete answer to the appellant's objection to the maintainability of the writ petition filed by Respondent 1. What the High Court has done by entertaining the writ petition and issuing directions for protection of the persons employed to do work relating to sewage operations is part of its obligation to do justice to the disadvantaged and poor sections of the society. We

may add that the superior courts will be failing in their constitutional duty if they decline to entertain petitions filed by genuine social groups, NGOs and social workers for espousing the cause of those who are deprived of the basic rights available to every human being, what to say of fundamental rights guaranteed under the Constitution. It is the duty of the judicial constituent of the State like its political and executive constituents to protect the rights of every citizen and every individual and ensure that everyone is able to live with dignity."

42. It would thus be clear that public interest litigation can only be entertained at the instance of a bonafide litigant and cannot be used by unscrupulous litigants to disguise personal or individual grievance as a public interest litigation. The instant petition fails to qualify the above parameters.

43. It has repeatedly come to the notice not only of this Court, but also the Hon'ble Supreme Court that there is a lot of misuse of public interest litigation, which now is a serious matter of concern for the judicial process.

44. We need not multiply or make reference to a large number of judgments in this regard and reference to a recent judgment of the Hon'ble Supreme Court rendered by three Hon'ble Judges' Bench in this regard shall suffice.

45. In *Tehseen Poonawalla vs. Union of India and another* (2018) 6 SCC 72, the Hon'ble Supreme Court while dealing with the issue of object of a public interest litigation and its mis-utilization by persons with personal agenda observed as under:

"Public Interest Litigation

96. Public Interest Litigation has developed as a powerful tool to espouse the cause of the marginalised and oppressed. Indeed, that was the foundation on which public interest jurisdiction was judicially recognised in situations such as those in *Bandhua Mukti Morcha v Union of India* (1984) 3 SCC 161. Persons who were unable to seek access to the judicial process by reason of their poverty, ignorance or illiteracy are faced with a deprivation of fundamental human rights. Bonded labour and under trials (among others) belong to that category. The hallmark of a public interest petition is that a citizen may approach the court to ventilate the grievance of a person or class of persons who are unable to pursue their rights. Public interest litigation has been entertained by relaxing the rules of standing. The essential aspect of the procedure is that the person who moves the court has no personal interest in the outcome of the proceedings apart from a general standing as a citizen before the court. This ensures the objectivity of those who pursue the grievance before the court. Environmental jurisprudence has developed around the rubric of public interest petitions. Environmental concerns affect the present generation and the future. Principles such as the polluter pays and the public trust doctrine have evolved during the adjudication of public interest petitions. Over time, public interest litigation has become a powerful instrument to preserve the rule of law and to ensure the accountability of and transparency within structures of governance. Public interest litigation is

in that sense a valuable instrument and jurisdictional tool to promote structural due process.

97. Yet over time, it has been realised that this jurisdiction is capable of being and has been brazenly mis-utilised by persons with a personal agenda. At one end of that spectrum are those cases where public interest petitions are motivated by a desire to seek publicity. At the other end of the spectrum are petitions which have been instituted at the behest of business or political rivals to settle scores behind the facade of a public interest litigation. The true face of the litigant behind the façade is seldom unravelled. These concerns are indeed reflected in the judgment of this court in *State of Uttaranchal v Balwant Singh Chaufal* (2010) 3 SCC 402. Underlining these concerns, this court held thus: (SCC p.453, para 143).

"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."

98. The misuse of public interest litigation is a serious matter of concern for the judicial process. Both this court and the High Courts are flooded with litigation and are burdened by arrears. Frivolous or motivated petitions, ostensibly invoking the public interest detract from the time and attention which courts must devote to genuine causes. This court has a long list of pending cases where the personal liberty of citizens is involved. Those who await trial or the resolution of appeals against orders of conviction have a legitimate expectation of early justice. It is a travesty of justice for the resources of the legal system to be consumed by an avalanche of misdirected petitions purportedly filed in the public interest which, upon due scrutiny, are found to promote a personal, business or political agenda. This has spawned an industry of vested interests in litigation. There is a grave danger that if this state of affairs is allowed to continue, it would seriously denude the efficacy of the judicial system by detracting from the ability of the court to devote its time and resources to cases which legitimately require attention. Worse still, such petitions pose a grave danger to the credibility of the judicial process. This has the propensity of endangering the credibility of other institutions and undermining public faith in democracy and the rule of law. This will happen when the agency of the court is utilised to settle extra-judicial scores. Business rivalries have to be resolved in a competitive market for goods and services. Political rivalries have to be resolved in the great hall of democracy when the electorate votes its representatives in and out of office. Courts resolve disputes about legal rights and entitlements. Courts protect the rule of law.

There is a danger that the judicial process will be reduced to a charade, if disputes beyond the ken of legal parameters occupy the judicial space."

46. The aforesaid observations were relied upon and reiterated by another Hon'ble three Judges' Bench of the Hon'ble Supreme Court in a very recent case in Re: Prashant Bhushan and Anr., Suo Motu Contempt Petition (CRL.) No. 1 of 2020, decided on 31.08.2020.

47. Here we may also note that in compliance to the directions issued by the Hon'ble Supreme Court in State of Uttaranchal Vs. Balwant Singh Chauhal (2010) 3 SCC 402, this Court vide notification dated 08.04.2010, with a view to preserve the purity and sanctity of Public Interest Litigation and also to keep a check on frivolous letters/petitions has framed Rules known as The Himachal Pradesh High Court Public Interest Litigation Rules, 2010. Rules 3 and 4 thereof read as under:-

"3. The petitions/complaints/letters and new paper clippings falling under the following categories can be treated under Public Interest Litigation.

(i) Bonded labour matters.

(ii) Neglected children.

(iii) Non-payment of minimum wages to workers and exploitation of casual workers and complaints of violation of Labour Laws (except in individual cases).

Provided that in respect of clauses (i), (ii) and (iii) above, if any of these matters forming the subject matter of the communication relates to one person (as opposed to a group of persons) this cannot be termed as a PIL and can be at best be treated as an individual writ petition.

(iv) Petitions against atrocities on women; in particular harassment of bride, bride burning, rape, murder, kidnapping etc;

(v) Petitions complaining of harassment or torture of villagers by co-villagers or by police in respect of persons belonging to Scheduled Castes and Scheduled Tribes and economically backward classes;

Provided that in respect of clauses (iv) and (v) above if any of these matters of the communication relates to one person (as opposed to a group of persons) this cannot be called as a PIL.

(vi) Petitions pertaining to environmental pollution, disturbance of ecological balance, drugs, food adulteration, maintenance of heritage and culture antiques, forest and wild life, encroachment of public property and other matters of public importance;

(vii) Petitions from riot-victims; and

(viii) Family pension.

EXPLANATION: The test to treat a communication as PIL is whether any

particular communication relates to an individual, if it does, it will be an individual, if it does, it will be an individual's C.W.P. and not a PIL irrespective of the fact whether the individual is complaining of any harassment or any violation of rights, which may also be akin to a group. If, however, the communication relates to a group and it is felt that group cannot defend itself or is not in a position to come to the Court, that would be a PIL warranting interference of the High Court in that PIL.

4. However, no petition involving individual/personal matter shall be entertained as Public Interest Litigation including the matters pertaining to landlord tenant disputes, service matters except concerning pension and gratuity; the petitions for early hearing of cases as well as the petitions concerning maintenance of wives, children and parents."

48. As per Rule 9, the Court before entertaining a Public Interest Litigation shall keep in view the following factors:-

"(i) to verify the credentials of the petitioner;

(ii) satisfaction regarding the correctness of the contents of the petition;

(iii) substantial public interest is involved;

(iv) the petition which involved larger public interest, gravity and urgency must be given priority over other petitions;

(v) to ensure that the PIL is aimed at redressal of genuine public harm or public injury. It shall also be ensured that there is no personal gain, private or oblique motive behind filing the public interest litigation.

(vi) to ensure that the petition filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous consideration."

49. The petition does not even fulfill the criteria as prescribed in the aforesaid Rules and even though the petition is claimed to have been filed in Public Interest Litigation, it does not even qualify to be registered as such and is therefore, not maintainable for the reasons all stated above and for reasons recorded hereinafter also.

50. In addition to the aforesaid, it would be noticed that the Trust in the instant case was registered on 11.09.2000, whereas the petition was filed after a lapse of about 12 years i.e. in the year 2012. What would be the effect of delay and laches and whether such public interest litigation should be entertained, was considered by the Hon'ble Supreme Court in R & M Trust v. Koramangala Residents Vigilance Group (2005) 3 SCC 91, wherein at paragraphs 23 and 24, it was observed as follows:-

23. Next question is whether such Public Interest Litigation should at all be

entertained & laches thereon. This sacrosanct jurisdiction of Public Interest Litigation should be invoked very sparingly and in favour of vigilant litigant and not for the persons who invoke this jurisdiction for the sake of publicity or for the purpose of serving their private ends.

24. Public Interest Litigation is no doubt a very useful handle for redressing the grievances of the people but unfortunately lately it has been abused by some interested persons and it has brought very bad name. Courts should be very very slow in entertaining petitions involving public interest in a very rare cases where public at large stand to suffer. This jurisdiction is meant for the purpose of coming to the rescue of the down trodden and not for the purpose of serving private ends. It has now become common for unscrupulous people to serve their private ends and jeopardize the rights of innocent people so as to wreak vengeance for their personal ends. This has become very handy to the developers and in matters of public contracts. In order to serve their professional rivalry they utilize the service of the innocent people or organization in filing public interest litigation. The Courts are sometimes persuaded to issue certain directions without understanding implication and giving a handle in the hands of the authorities to misuse it. Therefore, the courts should not exercise this jurisdiction lightly but should exercise in a very rare and few cases involving public interest of large number of people who cannot afford litigation and are made to suffer at the hands of the authorities. The parameters have already been laid down in a decision of this Court in the case of *Balco Employees' Union (Regd.) v. Union of India & Ors.* reported in (2002) 2 SCC 333, wherein this Court has issued guidelines as to what kind of public interest litigation should be entertained and all the previous cases were reviewed by ".

77. Public Interest litigation, or PIL as it is more commonly known, entered the Indian Judicial process in 1970. It will not be incorrect to say that it is primarily the Judges who have innovated this type of litigation as there was a dire need for it. At that stage, it was intended to vindicate public interest where fundamental and other rights of the people who were poor, ignorant or in socially or economically disadvantageous position and were unable to seek legal redress were required to be espoused. PIL was not meant to be adversarial in nature and was to be a cooperative and collaborative effort of the parties and the court so as to secure justice for the poor and the weaker sections of the community who were not in a position to protect their own interests. Public interest litigation was intended to means nothing more than what words themselves said viz. "litigation in the interest of the public".

78. While PIL initially was invoked mostly in cases connected with the relief to the people and the weaker sections of the society and in areas where there was violation of human rights under Article 21, but with the passage of time, petitions have been entertained in other spheres, Prof. S.B. Sathe has summarized the extent of the jurisdiction which has now been exercised in the following words::

"PIL may, therefore, be described as satisfying one or more of the following

parameters. These are not exclusive but merely descriptive;

- Where the concerns underlying a petition are not individualist but are shared widely by a large number of people (bonded labour, undertrial prisoners, prison inmates.)
- Where the affected persons belong to the disadvantaged sections of society (women, children, bonded labour, unorganized labour, etc.)
- Where judicial law making is necessary to avoid exploitation (inter-country adoption, the education of the children, bonded labour, unorganized labour, etc.)
- Where judicial law making is necessary to avoid exploitation (inter-country adoption, the education of the children of the prostitutes).
- Where judicial intervention is necessary for the protection of the sanctity of democratic institutions (independence of the judiciary, existence of grievances redressal forums.)
- Where administrative decisions related to development are harmful to the environment and jeopardize people's right to natural resources such as air or water."

79. There is, in recent years, a feeling which is not without any foundation that public interest litigation is now tending to become publicity interest litigation or private interest litigation and has a tendency to be counterproductive.

80. PIL is not a pill or a panacea for all wrongs. It was essentially meant to protect basic human rights of the weak and the disadvantaged and was a procedure which was innovated where a public spirited person files a petition in effect on behalf of such persons who on account of poverty, helplessness or economic and social disabilities could not approach the Court for relief. There has been in recent times, increasingly instances of abuse of PIL. Therefore, there is a need; to reemphasize the parameters within which PIL can be resorted to by petitioner and entertained by the Court. This aspect has come up for consideration before this Court and all we need to do is to recapitulate and reemphasize the same."

51. It would thus be evident from the aforesaid discussion that the petitioner has not approached this Court with clean hands. This Court in exercise of its extraordinary jurisdiction is a Court of equity and any person approaching is expected not only to act with clean hands but also with clean mind, clean heart and with clean objective. He who seeks equity must do equity. The judicial process cannot become an instrument of oppression or abuse or a means in the process of Court to subvert justice for the reasons that the Courts exercise jurisdiction only in furtherance of justice. The interest of justice and public interest coalesce and therefore, they are very often one and the same.

52. It is of utmost importance that those who invoke this Court's jurisdiction seeking waiver of the locus standi rule must exercise restraint in moving the

Court by not plunging in areas wherein they are not well-versed. Such a litigant must not succumb to spasmodic sentiments and behave like a knight errant roaming at will in pursuit of issues providing publicity. He must remember that as a person seeking to espouse a public cause, he owes it to the public as well as to the court that he does not rush to court without undertaking a research, even if he is qualified or competent to raise the issue. Besides, it must be remembered that a good cause can be lost if petitions are filed on half-baked information without proper research or by persons who are not qualified and competent to raise such issues as the rejection of such a petition may affect third party rights. Lastly, it must also be borne in mind that no one has a right to the waiver of the locus standi rule and the court should permit it only when it is satisfied that the carriage of proceedings is in the competent hands of a person who is genuinely concerned in public interest and is not moved by other extraneous considerations. So also the court must be careful to ensure that the process of the Court is not sought to be abused by a person who desires to persist with his point of view, almost carrying it to the point of obstinacy (Ref:- S.P. Anand vs. H. D. Deve Gowda, (1996) 6 SCC 734).

53. The petitioner seeks publicity and has filed this petition with an ulterior motive to settle scores with the 5th respondent.

54. The petitioner has indulged in leveling wild and reckless allegations besmirching the character of others, more particularly, respondent No. 5 who, as per the petitioner himself, happens to be the former Chief Minister of the State of Himachal Pradesh and also the former Union Cabinet Minister.

55. Moreover, as observed above, there is no explanation for the delay and latches and above all the petitioner has not chosen to controvert the stand of the respondents taken in the reply(ies), by filing rejoinder(s).

56. Lastly and more importantly, the status report filed by the Special Secretary (Health) in compliance to the order passed by this Court on 14.04.2019, which again has gone unrebutted, falsifies the claim of the petitioner and is a clear indicator that the petitioner has abused the process of the Court.

57. In view of the aforesaid discussion not only is there no merit in this petition, but the same is also mischievous and has only resulted in wastage of precious Court's time. Even the respondents have unnecessarily been dragged into an otherwise avoidable litigation.

58. Accordingly, this petition is dismissed with costs of Rs.1,00,000/- out of which Rs.50,000/- will be paid by the petitioner to the 4th and 5th respondents in equal share while the remaining amount of Rs.50,000/- will be deposited in the account of H.P. High Court Bar Association Welfare Fund within a period of two months from today. Pending application(s), if any, also stands disposed of.

For compliance to come up on 18.12.2020.