

(2015) 07 DEL CK 0178

In the Delhi High Court

Case No : Writ Petition (C) 6215 of 2015

Campaign for People Participation in Development Planning	APPELLANT
Vs	
Union of India and Others	RESPONDENT

Date of Decision : 14-07-2015

Acts Referred:

Constitution of India, 1950 — Article 239AA, 239-AA
Government of National Capital Territory of Delhi Act, 1991 — Section 24, 25, 49, 52

Citation : (2015) 7 AD 117 : (2015) 151 DRJ 320

Hon'ble Judges : G. Rohini, C.J.; Jayant Nath, J

Bench : Division Bench

Advocate : Anil K. Aggarwal, for the Appellant; Sanjay Jain, ASG, Jasmeet Singh, CGSC, Vidur Mohan, Shreshth Jain and Kritika Mehra, Advocates for the Respondent

Final Decision : Dismissed

Judgement

G. Rohini, C.J.—The petitioner claims to be a voluntary organization incorporated and registered as a society under the Societies Registration Act, 1860. It is averred in the writ petition that the petitioner has been taking up various problems of the people of common interest, particularly, issues relating to enforcement of constitutional provisions and furtherance of rule of law.

2. The present petition is filed by way of Public Interest Litigation with the following prayers:

"A. Issue writ of or in the nature of mandamus and/or any other appropriate writ, order or direction declaring that the impugned provisions of clause (3) and (4) of Article 239AA of the Constitution and Section/s 24 and 25 of the Government of NCT of Delhi Act, 1991 limiting and restricting the legislative powers of the Legislative Assembly of NCT of Delhi, except for Entries 1, 2 and 18 of State List-II of Schedule VII of the Constitution, are ultravires the Constitution of India and all effects thereof till date are null and void ab-initio; and

B. Issue writ of or in the nature of mandamus and/or any other appropriate writ, order or direction declaring that the impugned section 49 and 52 of the Government of NCT of Delhi Act, 1991 limiting and restricting the executive powers of the Council of Ministers of elected Government NCT of Delhi, except for Entries 1, 2 and 18 of the State List-II of Schedule VII of the Constitution are ultravires the Constitution of India and all effects thereof till date are null and void ab-initio; and

C. Issue writ of or in the nature of mandamus and/or any other appropriate writ, order or direction declaring that the Council of Ministers of the elected Government of NCT of Delhi have executive power in all matters of Concurrent list and State List- II of the Schedule VII of the Constitution as is provided for in the Constitution in the case of the other States, except for entries 1, 2 and 18 of the State List reserved in the favour of the Union of India; and

D. Issue writ of or in the nature of mandamus and/or any other appropriate writ, order or direction to the respondents to consider and to give its comments and suggestion on limiting and restricting the executive and legislative power of intervention of the Union of India in subject matters of Entries 1, 2 and 18 of the State List - II of Schedule VII of the Constitution only to the area falling within the New Delhi district of the NCT of Delhi; and to confer full power, authority and jurisdiction to the elected Government of NCT of Delhi for all other areas of falling outside the New Delhi district of NCT of Delhi; and

In case the Hon"ble Court is not inclined to grant the aforesaid prayers:

E. Issue writ of or in the nature of mandamus and/or any other appropriate writ, order or direction declaring that the elected Government of NCT of Delhi does not possess power to enter into any contract in its own name or otherwise and/or to institute any suit or initiate any proceedings in its name or otherwise in any manner whatsoever to sue or defend itself in matters relating to and connected with administration of the National Capital Territory of Delhi; and

F. Issue writ of or in the nature of mandamus and/or any other appropriate writ, order or direction declaring that the elected Government of NCT of Delhi has no jurisdiction, power and authority of appointment of Legal Officers, Public Prosecutors and Standing Counsels etc. to appear before the Courts and to sue or defend for the Government of NCT of Delhi; and declare all such appointments made by the Government of NCT of Delhi as illegal and all effect thereof be declared null and void ab-initio; and

G. Issue writ of or in the nature of mandamus and/or any other appropriate writ, order or direction the respondents to substitute the Union of India in place of the Government of NCT of Delhi as petitioner/plaintiff or respondent/defendant party in all matters and cases pending before the Courts in Delhi and rest of India and outside India; and

H. to pass such other writ/s, order/s or direction/s including the cost of this

petition, as this Hon''ble Court deems fit and proper in the facts and circumstances of the case and in the interest of justice."

3. It may at the outset be mentioned that with regard to cause of action for filing the petition, it is pleaded in para 8:

"That present petition is actuated by recent media reports of conflict of power, supremacy and authority arising between the Central Government represented through the Lieutenant Governor of Delhi and Government of NCT of Delhi in the matters and affairs relating to administration of NCT of Delhi to the detriment of basic and fundamental principles imbued as the basic structure of democratic governance under the Constitution of India."

4. It is further pleaded that the issues raised in the petition are of general importance for immediate intervention and consideration by this Court and that this Court being the custodian of the Constitution of India ought to intervene and strike a balance between democratic rule for the people of Delhi since the provisions impugned in the petition are hitting at the most basic and fundamental structure of the Constitution of India.

5. Before proceeding further, we would like to reiterate the well settled legal position that a person acting bonafide 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. It is also well-settled that a writ petitioner who comes to the Court for relief in public interest must come not only with clean hands like any other petitioner but also with a clean heart, clean mind and clean objective. In case the Court comes to a conclusion that there are no bona fides on the part of the petitioner and that the petitioner has abused the process of law, such litigation should be curbed at the earliest stage. [Vide Ashok Kumar Pandey Vs. The State of West Bengal and Others, AIR 2004 SC 280 : (2003) 9 JT 140 : (2003) 9 SCALE 741 : (2004) 3 SCC 349 : (2011) 1 SCC(Cri) 865 : (2003) 5 SCR 716 Supp , Dr. B. Singh Vs. Union of India (UOI) and Others, AIR 2004 SC 1923 : (2004) 101 FLR 575 : (2004) 3 JT 127 : (2004) 3 SCALE 224 : (2004) 3 SCC 363 : (2004) 2 SCR 1061 : (2004) AIRSCW 1494 : (2004) 2 Supreme 387 , Kalyaneshwari Vs. Union of India (UOI) and Others, (2011) 1 SCALE 651 : (2011) 3 SCC 287 : (2011) 1 SCC(L&S) 498 : (2011) 1 SCR 894 : (2012) 3 SLJ 476 : (2011) AIRSCW 2010 and Holicow Pictures Pvt. Ltd. Vs. Prem Chandra Mishra and Others, AIR 2008 SC 913 : (2008) 1 CTC 711 : (2007) 14 SCALE 10 : (2007) 12 SCR 1068].

6. Now coming to the case on hand, though the petition is instituted by a voluntary organization which claims to have no political association, the tenor of the petition and the pleadings particularly, the relief sought in the petition make us feel that the petitioner is seeking to espouse the cause of one of the political parties that are specifically referred to in the petition.

7. Some of the portions of the petition, which according to us, raise the

apprehension that the petition is motivated by a sense of political rivalry rather than a public spirited concern about the governance and public administration of Delhi read as under:

"9. That the issue/s raised in the present petition have become matters of tertiary importance in the ongoing struggle for supremacy in the matters of administration of Delhi between the Lieutenant Governor, NCT of Delhi and his Council of Ministers. The present elected Government of NCT of Delhi headed by novice but progressive legislators of the newly founded Aam Aadmi Party (AAP) are being deprived, by the respondents headed by the conventional and orthodox political adversaries, of their constitutional mandate of democratic governance and public administration of Delhi in all subjects and matters falling in List II - State List and List III - Concurrent List of the Seventh Schedule of the Constitution of India. Due to obvious ideological variance in perceptions and refusal by the newly elected legislators of Delhi to continue with the past practice of political convenience and comfort between the Central Government and the Govt. of NCT of Delhi, the Lieutenant Governor representing the Central Government is being directed by the respondents to checkmate the legislators elected by the people of Delhi from Aam Aadmi Party controlling the Government in the NCT of Delhi.

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33. That is most respectfully submitted for the consideration of this Hon'ble Court that aforesaid provision of clause (4) of Article 239-AA of the Constitution and Sections 49 and 52 of the Government of NCT of Delhi Act, 1991, conferring arbitrary, unbridled and unfettered power upon the respondents without being made accountable to the people of Delhi are against the mandate of the people of Delhi thus being contrary to the fundamental and basic principles of democracy imbued in the Constitution are ultra vires the Constitution of India.

.....

36. That it is to humbly submit that even after repeal of dictatorial law of Delhi Administration Act, and despite making provision for a Legislative Assembly, the Capital city continues to be directly and indirectly administered by the Central Government and its representative, the Lieutenant Governor. The elected State Government of Capital is mere name sake government having no effective power and control even in the matters affecting the local problems, needs and aspiration of the people residents of Delhi.

37. That HOWEVER very logically the people of Delhi expect and believe that their elected State Government is entirely and fully responsible and accountable to the people for the governance and administration of Delhi.

38. That despite the fact that Delhi Government is not responsible for maintaining law and order in Delhi, whenever a gruesome crime happens in Delhi, the people of Delhi have always and openly blamed the elected State

Government. The elected Govt. of Delhi have always been at receiving end for poor law & order situation and policing in Delhi. People of Delhi does not expect the Union Government/respondents to maintain law & order in the Capital City.

39. That though under the impugned provisions of law, the Government of NCT of Delhi is disabled and not competent to institute or defend any suit of legal proceedings, the people of Delhi in their logical belief and assumption have been logically and routinely filing court cases against Govt. of NCT of Delhi in both civil and criminal matters of all sorts and kinds. And in blissful ignorance of law court cases are also being instituted in the Courts by the Government of NCT of Delhi.

51. That it is most also to state and submit that in case it is found and held that the impugned provisions of law are not in conflict with the basic and fundamental principles and scheme of democratic governance imbued in the Constitution of India, the elected Government and Legislative Assembly of Delhi shall be reduced to puppet in the hands of the respondents. In such a scenario, all appointments of officers/staffs/employees and all contracts made and executed by the elected Government of Delhi including recent appointment of Public Prosecutors and Standing Counsels will be rendered illegal, ab-initio null and void being without authority, power and jurisdiction and ultra vires the Constitution and impugned statute governing the same."

8. In the light of the above-noticed averments in the petition, the petitioner appears to be very much concerned with a political party and the object of the petition appears to be determination of the controversy in favour of the said political party rather than a sincere endeavour to seek determination in the interest of public. Having regard to the way in which the issue sought to be espoused is projected, it appears to us that the petitioner is acting as a proxy and the petition is filed with vested interest.

9. As held in *Neetu Vs. State of Punjab and Others*, AIR 2007 SC 758 : (2007) 1 JT 452 : (2007) 1 SCALE 168 : (2007) 10 SCC 614 : (2007) 1 SCR 223 when a particular person is the object and target of a petition styled as PIL, the Court has to be careful to see whether the attack in the guise of public interest is really intended to unleash a private vendetta, personal grouse or some other malafide object. Having considered in detail the scope of public interest litigation and after reviewing various decided cases on the subject, the Apex Court in *State of Uttaranchal Vs. Balwant Singh Chaufal and Others*, AIR 2010 SC 2550 : (2010) 1 JT 329 : (2010) 1 SCALE 492 : (2010) 3 SCC 402 : (2010) 1 SCC(L&S) 807 : (2010) 2 SCR 678 : (2010) 1 SLR 581 : (2010) 2 UJ 511 : (2011) AIRSCW 2486 : (2010) 6 Supreme 569 laid down certain guidelines which included that the Court must encourage genuine and bonafide PIL and effectively discourage and curb the PIL filed for extraneous considerations and that the Courts before entertaining the PIL should ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

10. As expressed above, the manner in which the issue is sought to be projected

in the present petition gives rise to the apprehension that the petition is motivated by a sense of political rivalry rather than a public spirited concern about enforcement of the Constitutional and statutory rights of the people of Delhi. As observed in *State of Himachal Pradesh Vs. A Parent of a Student of Medical College, Simla and Others*, AIR 1985 SC 910 : (1985) 1 SCALE 758 : (1985) 3 SCC 169 : (1985) 3 SCR 676 when the Court passes an order in public interest litigation it does so not in a spirit of confrontation but with a view to enforcing the Constitution and the law. We may also refer to *Kunga Nima Lepcha and Others Vs. State of Sikkim and Others*, AIR 2010 SC 1671 : (2010) CriLJ 2411 : (2010) 3 JT 226 : (2010) 2 SCALE 309 : (2010) 4 SCC 513 : (2010) 3 SCR 787 wherein it was observed that the writ jurisdiction cannot be turned into an instrument of partisan considerations.

11. For the aforesaid reasons, we are of the view that the present petition is not bona fide since the approach of the petitioner appears to be motivated to settle the political scores. Hence, the writ petition cannot be maintained as a Public Interest Litigation.

12. Accordingly, the writ petition is dismissed. No costs.