

(2001) 07 DEL CK 0021
In the Delhi High Court
Case No : CWP No. 4182 of 2001

C.S. Rathour (Advocate)

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 13-07-2001

Acts Referred:

Constitution of India, 1950 — Article 370, 44

Citation : (2001) 59 DRJ 522

Hon'ble Judges : Dr. Arijit Pasayat, C.J.; D.K. Jain, J

Bench : Division Bench

Advocate : in perso, for the Appellant; Mr. K.K. Sud, A.S.G. and Mr. Neeraj Jain, for the Respondent

Judgement

Arijit Pasayat C.J.

1. This petition is stated to have been filed in public interest with the following prayers:

(1) Issue an appropriate writ, order or direction in the nature of mandamus thereby directing and commanding Union of India to cancel/withdraw/defer its decision taken on 23rd May, 2001 regarding inviting Pak Chief Executive General Parvez Musharraf now the President of Pakistan for his visit to India and subsequent invitation letter dated 25th May, 2001 sent by the Prime Minister of India Mr. Atal Behari Vajpayee to the Pak Chief Executive General Parvez Musharraf now the self designated President of Pakistan because the said invitation will not serve the desired purpose in terms of its spirit and language of the letter because for Pakistan and its President General Parvez Musharraf is still adamant for plebiscite in Kashmir treating the J&K as a disputed territory and "core issue" in the Agenda of his talk with Indian Prime Minister and demanding solution of Jammu & Kashmir dispute under the U. N. Resolution in his scheduled visit in India during the "Agra Summit" from 14th to 16th July, 2001 which is against the sovereignty, integrity, unity and prestige of India at this juncture; and

(2) Issue appropriate writ, order or direction in the nature of "prohibition" thereby calling upon the Government of India to take its appropriate steps for restraining Pak military ruler General parvez Musharraf, now the self designated President of Pakistan, to visit India during 14th to 16th July, 2001 or to have any talk any time thereafter unless and until he withdraws his statements of extending his government's moral, political and diplomatic support to the alleged struggle of Kashmir and also stops aiding, abetting and instigating the cross border terrorism in the Jammu and Kashmir region from its soil and also makes its firm commitment publicly in writing of not advocating or raising the J&K issue at any international forum and interference into India's internal matters" and/or alternatively

(3) If the Pak President General Parvez Musharraf visits in India as per the fixed schedule during 14th to 16th July, 2001, the Govt. of India be directed to take its appropriate steps for preventing/stopping Mr. Parvez Musharraf and his government from raising the issue of "plebiscite" in Kashmir or solution of territorial disputes of J&K or from discussing the Jammu & Kashmir issue at all during his "Agra Summit" except taking his firm decision on behalf of his country against aiding, abetting and sponsoring militancy in Jammu and Kashmir and as well as commitment for getting vacated the "Pak-occupied Kashmir" (known as POK for short) forthwith as per the U.N.Charter of 1948 and subsequent undisputed agreements and covenants entered into between the earlier heads of Pakistan Government and India for achieving the peaceful and permanent solution of Kashmir problem; and

(4) Issue appropriate orders and direction to the Government of India to initiate its appropriate steps for taking legal actions before the "International Human Rights Commission" or the "International Courts of Justice" against the Government of Pakistan on account of killing of thousand of innocent Kashmiri people and Indian Armed Forces from the period of Kargil was in May-June, 1999 till date including filing compensation cases for grant of compensation on behalf of the victims of terrorism which was fully aided, abetted and sponsored by the Pakistan Government to grab and annex the Jammu and Kashmir into Pakistan by its armed forces without considering the settled legal status of Jammu and Kashmir as of an integral part of India since its accession to India in 1947 by way of Instrument of Accession; and

(4A) issue appropriate writ order or direction to the Government of India and the Law Commission of India to consider for abrogation/amendment of purposeless, outlived and unwarranted Article 370, take initiatives for amending the laws of J&K in conformity/uniformity with the laws of the rest of Indian states, frame uniform civil laws throughout India including the State of J&K as empowered under Article 44 of the Constitution of India, grant all civil rights of purchasing immovable properties in J&K and free movement of the people of other states, etc., in J&K to clearly and really treat the Jammu & Kashmir an integral part of India under the Indian Constitution and also under the prevailing facts and

circumstances in the interest of public and the Indian country as a whole and to achieve peace and permanent solution of Kashmir; and

(5) issue appropriate order and direction to the Government of India and the Government of Jammu & Kashmir to protect the life, liberty and properties each and every person/resident of the State of Jammu & Kashmir and take steps for preventing them from the unwanted, forced and compulsive step of migration from J&K to other States of India due to their insecurity in the State on account of continuous and growing incidents of terrorism in the State and also rehabilitate the Kashmiri people back to Jammu & Kashmir who had migrated from there to other States of India earlier due to the human rights violations and threat of life and liberty from the militants in the State to maintain the peace and harmony throughout India including the State of J&K and also take appropriate step to prevent the so called proxy was of Pakistan; and make the Indian Borders safe, secured and terrorism free country from foreign aggression etc., and release all the Indian soldiers detained by Pakistan Government during 1965 and 1971 wars;

(6) issue appropriate direction to the National Human Rights Commission/respondent No.... to take its own steps as empowered to it under the Protection of Human Rights Act, 1993 against the violation of human rights in J&K; and

(7) pass any other appropriate order or direction as this Hon"ble Court may deem fit and proper may also be passed in the circumstances of the case in the interest of India and its citizens."

2. The petitioner, who has appeared in person, stated that the scheduled visit of the President of Pakistan would lead to breach of sovereignty of the country and as issues regarding Kashmir are involved, this Court should direct the Union of India to cancel/withdraw/defer its decisions dated 23rd May, 2001 regarding invitation to Pakistan Chief Executive General Parvez Musharraf, now the President of Pakistan for visiting India and the subsequent invitation letter dated 25th May, 2001 sent by the Prime Minister of the country. When asked as to under what jurisdiction this Court will deal with the prayers made int he petition, the petitioner stated that in order to protect the integrity of the country it is the duty of the Court to accept the prayers and issue necessary directions. It is also submitted that it is the duty of the Court to see that policy decision are taken by the Government in line with the will of the people and, Therefore, the proposed visit of the President of Pakistan should be stayed for integrity and unity of the country.

3. We are of the view that the petition which is styled as public interest is not really one filed in public interest and is thoroughly misconceived. Petitioner could not show as to how this Court has jurisdiction to deal with the prayers made. Except vague assertion, nothing of substance is there in the petition. Though it is accepted that the impugned decisions are policy decisions, it is submitted that we cab even interfere with them in view of the political background involved.

Public interest litigation, which has now come to occupy an important field in the administration of law should not be "publicity interest litigation" or "private interest litigation" or "politics interest litigation". There must be real and genuine public interest involved in the litigation and it cannot be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity or to get publicity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the Court to wipe out violation of fundamental rights and genuine infraction of statutory provision. But no one should be allowed to use it for personal gain or private profit or political motive or any oblique consideration. 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 a 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 the 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. The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness of nature of information given by him; (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 (2) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such cases, 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 busy bodies or meddlesome interlopers impersonating as public-spirited holymen. Courts must do justice by promotion of good faith, and prevent law from crafty evasion. Courts must maintain the social balance by interfering where it is necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. We have made similar observations in the case of Delhi Municipal Workers Union (Regd.) Vs. MCD and Another, .

4. The prayers quoted above reveal that behind the beautiful veil of public interest litigation what is lurking is craze for publicity and there is really no public interest involved. This is a case which deserves to be dismissed with exemplary costs, which we direct. We direct the petitioner to pay cost of Rs. 50,000/-, which is to be deposited with the Delhi State Legal Services Authority, Patiala House, New Delhi, within a period of six weeks. If it is not done, it will be treated as an act of contempt warranting suitable action and necessary action shall be

taken.