

(2014) 12 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : CWP Nos. 7249 of 2010 and 8480 of 2014

Devinder Chauhan Jaita

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 03-12-2014

Acts Referred:

Citation : (2014) 12 SHI CK 0002

Hon'ble Judges : Mansoor Ahmad Mir, C.J.;Tarlok Singh Chauhan, J

Bench : Division Bench

Advocate : R.K. Sharma, Senior Advocate and Rajinder Dogra, Advocate for the Appellant; Shrawan Dogra, Advocate General, Anup Rattan, Romesh Verma, Addl. Advocates General, J.K. Verma, Deputy Advocate General and Shakya Negi, Proxy Counsel, Advocate for the Respondent

Judgement

Mansoor Ahmad Mir, C.J.—A batch of writ petitions, the lead petition of which was CWP No. 7249 of 2010, came to be disposed of vide order dated 6th September, 2013, passed by a Division Bench of this Court, in terms of the affidavit filed by the respondents-State containing assurance made by the State Authorities, with liberty to the writ petitioners or any affected person having any grievance to take recourse to appropriate proceedings, including to revive the concerned writ petition.

2. The petitioner Devender Chauhan Jaita moved an application, being CMP No. 18403 of 2014, for revival of the writ petition No. 7249 of 2010, on the grounds taken in the application, which was granted and the writ petition was posted for 2.12.2014.

3. CWP No. 8480 of 2014 has been moved by Shri Narender Bragta in the nature of public interest for issuing directions to the respondents to complete the construction of Theog-Rohru Road, efficiently and properly within the stipulated time frame i.e. by or before 1st June, 2016, and to submit status reports periodically, on the grounds taken in the writ petition.

4. At the very outset, we may place on record that three writ petitions came to be filed in the year 2010, in public interest, and similar reliefs were prayed for. After the Authorities concerned filed affidavits, containing details and status of the works in question, and the assurance made by the concerned Authorities to complete the said work within the time frame, came to be disposed of vide order supra.

5. The question is whether the writ petition i.e. CWP No. 8480 of 2014 is maintainable, in view of the above facts, read with the objection raised by the learned Advocate General on the last date of hearing vis-a-vis maintainability of the writ petition.

6. We have heard the learned Senior Advocate for the writ petitioner in CWP No. 8480 of 2014 and the learned Advocate General.

7. The learned Advocate General argued that the petitioner, namely, Shri Narender Bragta, was a Minister in the previous Government, which was contesting the batch of writ petitions, the lead of which was CWP No. 7249 of 2010, came to be disposed of in terms of the order passed by this Court on 6th September, 2013, referred to hereinabove. Thus, it is contended that the petitioner cannot file writ petition and seek same relief. The learned Advocate General further argued that the present writ petition is politically motivated, which fact is evident from the averments contained in paragraph 1 of the writ petition, wherein it has been admitted by the petitioner that he was a Minister and has every right to take care of the interests of the public and development of the area, and has filed the writ petition as such.

8. The learned Senior Advocate appearing for the writ petitioner argued that the writ petitioner has filed the writ petition in two capacities - one in his personal capacity being the permanent resident of the said area, an agriculturist and also having orchards situated in the said area; and secondly, being an ex-Minister, is also concerned with the welfare of the poor public of the area. The learned Senior Advocate further argued that in the present writ petition, the petitioner has arrayed the Contractor, to whom the contract of the work is allotted, as party respondent, who was not a party in the earlier writ petitions. Thus, it was submitted that the writ petition is maintainable in its present form. He also submitted that the petitioner be permitted to delete last four lines from paragraph 1 of the writ petition.

9. The learned Advocate General argued that the writ petitioner had publicly proclaimed/declared that the Bhartiya Janta Party would not sit idle and take the issue/subject matter of the writ petition to the Court, which was published in the Dailies having wide circulation in the entire Himachal Pradesh, such as, The Tribune etc., in their issues, dated 27th November, 2014. Therefore, the writ petition is outcome of political considerations.

10. We deem it proper to record herein that the Registry has received letters/communications, wherein grievance has been projected that Rohru-Shimla road

is in bad condition and is not being properly maintained, made part of the file. It is also stated in the said letters/communications that the work of the contractor is not satisfactory.

11. We cannot be oblivious to the fact that the road, subject matter of the writ petition, is really an important one and is the lifeline for large public residing in the area concerned, therefore, it becomes the duty of the State and the said Contractor to complete the construction of the road and bridges as early as possible and not later than the cut off date provided in the contract, read with the order made by this Court on 6th September, 2013, referred to supra. It is also the duty of the Courts to ensure that public interests are protected and grievances are redressed.

12. However, while determining the issue of maintainability of the present writ petition, both aspects, as discussed hereinabove, have to be kept in mind, and including the law expounded by the Apex Court in public interest litigations.

13. The concept of public interest litigation was evolved by the Apex Court and, in order to preserve the sanctity of the public interest litigation, the Apex Court has also held in so many unequivocal words that the remedy of public interest litigation should not be misused and the Courts should, prima facie, be satisfied that it is not the outcome of political or extraneous considerations or motivated one.

14. A reference may be made to the decision of the Apex Court in State of Uttaranchal Vs. Balwant Singh Chaufal and Others, , in which, in paragraph 198, it has been held as under:

"198. In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:-

(1) The courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the Rules prepared by the High Court is sent to the Secretary General of this court immediately thereafter.

(3) The courts should prima facie verify the credentials of the petitioner before entertaining a P.I.L.

(4) The court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The court should be fully satisfied that substantial public interest is involved

before entertaining the petition.

(6) The court should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

(8) The court should also ensure that the petitions 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 considerations."

15. The Apex Court in *Holicow Pictures Pvt. Ltd. Vs. Prem Chandra Mishra and Others*, , has held that, while dealing with the public interest litigations, it is desirable for the Courts to filter out the frivolous writ petitions and ensure that the writ petitions are not the outcome of political motivation or other oblique considerations. It is apt to reproduce paragraphs 18 and 23 of the said decision hereunder:

"18. 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 armory 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. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the Court is acting bonafide and not for personal gain or private motive or political motivation or other oblique considerations, the Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

23. In *S.P. Gupta v. Union of India* (1981 Supp. SCC 87), it was emphatically pointed out that the relaxation of the rule of locus standi in the field of PIL does not give any right to a busybody or meddlesome interloper to approach the Court under the guise of a public interest litigant. He has also left the following note of caution. (SCC p. 219, para 24):

"But we must be careful to see that the member of the public, who approaches

the Court in cases of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration. The Court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective.""

16. Applying the above tests to the facts of the present case and while keeping in view paragraph 1 of the writ petition that the petitioner was an ex-Minister, the writ petition cannot be retained as public interest litigation on behalf of the petitioner.

17. However, at the same time, since we feel that the issue projected through the present writ petition, is of great importance and relates to public at large, question which emerges for consideration is whether this Court should dismiss the writ petition or keep the same on the docket of this Court, by keeping the writ petitioner out of picture, in order to redress the grievance of the public in general, and treat the said writ petition as Public Interest Litigation by appointing an Amicus Curiae to assist the Court. The answer is in the affirmative in view of the dictum of the Apex Court in M/s Holicow Pictures Pvt. Ltd. (supra). It is apt to reproduce paragraph 26 of the said decision hereunder:

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

18. In the given circumstances, we deem it proper to take suo motu cognizance and treat the writ petition i.e. CWP No. 8480 of 2014 as public interest litigation by keeping the writ petitioner out of picture. The Registry is directed to correct the memo of parties accordingly.

19. Ms. Jyotsna Rewal Dua, Advocate, is appointed as Amicus Curiae. The Registry is directed to supply a complete copy of the paper book to the learned Amicus Curiae. The learned counsel appearing for the petitioner and the petitioner in CWP No. 7249 of 2010, who is also an Advocate by profession, are also requested to assist the Court.

20. In order to ensure that the construction of the work, subject matter of the writ petition, is properly and efficiently executed, we deem it proper to constitute a Committee of the following officers to monitor the progress of the work:

1. Chief Secretary, State of H.P. - Chairman
2. Principle Secretary (PW), to the Govt. of H.P. - Member
3. Engineer-in-Chief (PWD) - Member

21. The above Committee shall monitor the progress of the work and shall submit their separate status reports on each and every hearing.

22. Issue notice to the respondents. Mr. Romesh Verma, learned Additional Advocate General, waives notice for respondents No. 1 and 2, on whose instructions Mr. Shrawan Dogra, learned Advocate General, appears for the said respondents. Notice to respondent No. 3 through learned Advocate General. Dasti notice also permitted.

23. The respondents are directed to file present status reports and the affidavits/ replies within two weeks.

24. In the given circumstances, CWP No. 7249 of 2010 be consigned to records in view of the orders passed. A copy of this order be placed on record of said petition.

25. List CWP No. 8480 of 2014 on 17th December, 2014.