(2007) 07 MP CK 0069

In the Madhya Pradesh High Court

Dwarikaprasad Tiwari and Another APPELLANT

Vs

State of M.P. and Others RESPONDENT

Date of Decision : 27-07-2007

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 227
Road Transport Corporations Act, 1950 — Section 19

Citation : (2008) 1 MPHT 102

Hon'ble Judges : Sanjay Yadav, J;Abhay Gohil, J

Bench : Division Bench

Judgement

Abhay Gohil, J.—Petitioners have filed this Probono Publico Petition under Article 226/227 of the Constitution of India on 29.9.1999 and his contention was that the M.P. State Road Transport Corporation (hereinafter shall be referred to as "Corporation") Gwalior has constructed some shops adjoining to New Bus Stand and D.M. Hotel. Now the same are being illegally constructed as Plaza Hotel. It was also mentioned that the land is acquired for establishment of new bus stand and now lease is being granted. It was alleged that around 48 shops were constructed by the Corporation near the new Bus stand Gwalior. They are being leased out for converting them into Hotel. The shops and bus stand should be saved and it was also mentioned that against the aforesaid action they have submitted representation to the Collector, to the General Manager and to the Chief Minister and other authorities and the relief which is being sought in the petition is that the permission of construction of hotel be cancelled and respondents be directed to stop the construction work of Hotel and it should be ensured that there may not be any inconvenience to the passengers in future so far as the basic amenities on the new bus stand are concerned and there should be enquiry by High Power Committee and those who are responsible be punished. Copy of the award passed by the Collector under Land Acquisition dt. 24.6.2007 is also filed and is on record.

2. Corporation has filed its return. In reply the case of the respondent Corporation is that the Corporation has constructed the bus stand in a huge

premises and having its own bus stand building and also the basic facilities like; toilet, bathroom, waiting room, canteen, parking, book stall, tea stalls etc. and the entire bus stand is fully equipped. Corporation has constructed as many as 40 shops as to earn revenue and profit by letting them. 20 shops were constructed in the year 1989 and 20 other shops were constructed in the year 1996 and around 26 lacs rupees were invested on the construction of the shops. Thereafter corporation issued tenders for the purposes of allotment of shops on lease for a period of 30 years. Various advertisements were issued for inviting tenders on 21.4.1995, 23.5.1995, 11.9.1995, 14.11.1995, 21.4.1996 and 4.12.1996. The initial premium amount was fixed at Rs.70,000/-but the Corporation has not received any offer from the intending bidders. The premium amount was enhanced to Rs.1,25,000/-for the front shops and Rs.1,00,000/-for the shops situated at back side and the premium amount was fixed in the interest of corporation so as to fetch the maximum revenue.

3. It was further submitted that the bidders did not turn up and some of the bidders, who turned up, failed to deposit the money and on 10.12.1996, Dy. General Manager wrote to the Managing Director and submitted that for the last five years, the shops are lying vacant and nobody has turned up to take the shop on lease neither anybody is taking interest in taking the shops on lease and requested for reducing the premium amount of the shops.

4. On 23.9.1998, the Corporation again issued tender. The same was published in the news paper for 40 shops and fixed the premium amount as Rs.42 lacs. It was issued in daily news paper ''Nav Bharat'' dt.23.9.1998. As against this tender, corporation received two offers, one from M/s Matoliya Motels Gwalior for the premium amount of Rs.44,01000/-and another by Vivek Hanlalka for premium amount of Rs.43,31,100/-. After considering the aforesaid offers in the interest of corporation, the Corporation accepted the offer of M/s Matoliya Motels. Respondent No.8 was the partner of the aforesaid firm. Letter of acceptance bid was sent by Annexure R/11 dt. 22.10.1998 and lease deed was executed for a period of 30 years between the Corporation and M/s Matoliya Motels on 30.11.1998. Copy of the lease deed has been placed on record as Annexure R/12, which is a registered sale deed. It is the reply of the corporation that in the tender notice, it was made clear that the bidders has to raise construction on his own expenses according to his convenience, but the ownership shall remain with the Corporation. Thereafter lessee sought permission to raise construction and constructed Hotel. Permission was also given by Municipal Corporation on 18.2.1999. Petitioner had also filed complaint to the Chief Minister in respect of the allotment of the shop in question to respondent No.8. The matter was referred to Lokayukt. M.P. The matter was investigated and site was investigated by Inspector Arvind Khare and it is the case of the Corporation that after enquiry by the Lokayukta proceedings were dropped as no illegality was found therein. In the reply it was also the objection on behalf of the Corporation that though the possession has been handed over, but the M/s Matoliya Motels has not been added as party and the action of the Corporation is in the interest of Corporation.

5. In the return, it has been clarified that from the various terms and conditions the Corporation has protected its interest and the Corporation is getting monthly rent of Rs.30,000/-with a clause of enhancement of 15% rent after every three years. The construction has been raised after obtaining permission and agreement. Though the permission is there for construction of multistory hotel, but at present the same is being run in single story. Town and Country Planning Department has also given permission dt. 22.1.1999. Corporation has also clarified that amount of compensation under Land Acquisition has already been deposited and Corporation has not committed any illegality in leasing out the property.

6. State was also made party in the petition. State has also filed its return. It was also submitted that earlier two petitions -W.P.No.318/99 and W.P.No.952/99 were filed for the same cause but they were dismissed as withdrawn or as not pressed.

7. On 13.3.2000, an objection was taken by the Dy. Government Advocate before the Court that the present petition does not satisfy the requirements of a Public Interest Litigation''. It does not disclose the petitioner''s social public standing/professional status and their public spirited antecedents. It also does not satisfy the nature of the cause and the interest involved. It is a contractual matter and objection was raised about the maintainability of the petition. On 8.8.2002 State filed I.A.No.4765/02, an application for dismissal of the Writ Petition but now State filed its reply on 28.9.2005, though prayed that the petition being misconceived, baseless, merit less devoid of substance be dismissed as not maintainable, but in the reply they have raised two points that the Corporation has not taken any permission from the State Government as well as from the Board of Directors.

8. Respondents No.7 and 8 have also filed their return and their contention is that they have submitted the open tender. Their bid was accepted as it was highest. They have deposited premium of Rs.44 lacs, they are paying the rent of Rs.30,000/-per month. There is a clause for 15% increase in the lease rent after every three years. The registered lease deed is executed in their favour. There is no illegality and malafides or favourtism so far as the grant of the lease of shop is concerned. In the agreement it had been clearly mentioned in condition No.3 that lessee shall maintain the original structure but shall be entitled to remove the walls and to cover Barandha and to change the nature of shops into rooms of the Hotel. In condition No.14 it has been mentioned that the lessee shall also be entitled to use the shops and roof for the purposes of hotel, lodge, restaurant, hospital, educational institution and also to sale commercial goods. The lease is for the period of 30 years and he will be entitled to use the open area for parking purposes. Accordingly, there map was approved by the Town and Country Planning Department as well as by the Municipal Corporation. The petition has not been filed in Public Interest as no public interest is involved and no interest of any citizen is adversely affected. It was further submitted that earlier two

petitions W.P. No. 348/99 and W.P.952/99 were filed, but those petitions were dismissed. Those petitions were filed on the same lines and this petition has been filed with a view to harass and grab the money from the respondents. Lokayukta has already enquired into the matter and dropped the proceedings. The corporation was suffering financial crises and was not having even money to pay the salary or retiral dues of the employees. Money of the Corporation was involved in construction of shops. Therefore, under the compelling circumstances corporation has called the tenders and corporation is having enough adjoining land to improve amenities and even to construct more shops. So far as the question of basic amenities for the citizen are concerned, they are already available on spot and being used by the citizens. The land was acquired for public purposes. So far as the permission from the State Government is concerned, it is not required under the Road Transport Corporation Act, 1950. Property has been leased out for 30 years and 1/3rd period has already expired. Renewal clause is also available in the agreement to protect the interest of the Corporation. Neither any malafide is there, nor any of the officer has extended any favourtism to the respondents and prayed for the disposal of the petition.

9. Having heard the learned Counsel for the parties we have carefully considered the submissions raised by the counsel for the parties and have also perused the documents. In the letter written by the Managing Director of the Corporation to the State Government dt.2.9.2005, it has been mentioned that the permission of construction of shops was taken and scheme was approved by the Board of Directors vide Resolution No2973 dt.23.10.1989 and the permission of change of land use was also taken from the Town and Country Planning Department on 22.11.1999. By this letter the Managing Director has approved the action and his contention was that the amount of Rs.26 lacs was spent, but they have received premium of Rs.44 lacs and also receiving monthly interest of Rs.30,000/-. The permission of construction of hotel was granted by the Town and Country Planning Department on 22.10.1999 and by another resolution No.3830 dt.18.4.2000, the Board of Directors have taken the decision to enhance the rent after getting it certified from Collector Bhopal. It was also mentioned that Lokayhukt has already dropped the proceedings by order dated 4.12.2000 and no basement is found on the spot and since the aforesaid land belongs to the Corporation, therefore permission was not obtained from the Government. In the terms and conditions of the tender it was also mentioned that the shops, roof and courtyard shall be given on 30 years lease and the construction over the roof shall be raised by the lessee at his own cost. Lease shall be renewable after every 30 years. Tender was submitted at the condition of lease and by letter dt. 22.10.1998 permission was granted for converting the shops into the rooms and thereafter the similar conditions were mentioned in the agreement.

10. From the entire process, it is clear that several advertisements were issued by the Corporation inviting tenders for lease of the allotment of shops, but there was no proper response from the public. The report was submitted by the Divisional Manager to the Managing Director and thereafter fresh tender were

invited by issuing NIT in the news paper. Two tenderers submitted the tenders and the conditions were negotiated and ultimately the tender of respondent Matoliya Motels was accepted on 22.10.1999 and thereafter they entered into the registered lease deed on 30.11.1998 and Municipal Corporation also granted permission on 18.2.1999 to convert the room into hotels. Joint Director Town and Country Planning Department also granted permission to the Matoliya Motels on 22.11.1999 and thereafter Board of Director also passed resolution No.3830 dated 18.4.2000 for the enhancement of the rent of shop after getting it certified by the Collector Gwalior.

11. State Government also supported this stand and the State Government filed application (I.A.No.4765/02) for dismissal of the Writ Petition and raised an objection before the Division Bench on 13.3.2000 for dismissal of the petition. Thereafter though the State has changed its stand. Now they are saying that permission was not taken by the State Government and there is no resolution by the Board of Directors. On the contrary learned Counsel for the respondents relied two resolutions passed by the Corporation; Resolution No.2937 dt. 23.10.1989 and Resolution No.3830 dt. 18.4.2000 by which the rent has been enhanced. This shows that the Board of Directors were fully aware with the matter and when they granted recommendation for the enhancement of lease rent on 18.4.2000 vide resolution No.3830, it means that the Board of Directors have consented thereon.

12. It was pointed out that the Corporation is established under the Road Transport Corporation Act, 1950 and it is a body corporate. It was also pointed out that vide note sheet dt.22.10.1998 the Chairman has approved the tender of Rs.44.1 lac before the letter dt.22.10.1998 for acceptance of bid was issued. Section 19 of the Act provides powers of the Corporation and Sub clause (b) of Sub section (2) of Section 19 provides the Corporation to acquire and hold such property, both movable and immovable, as the Corporation may deem necessary for the purpose of any of the said activities, and to lease, sell or otherwise transfer any property held by it and to enter into and perform all such contracts as may be necessary. Therefore, it is clear that the Corporation was having independent power and there is no riders that permission is required by the Government.

13. After scanning the entire documents on record, we find that neither there is any malafide or arbitrary exercise so far as the grant of lease is concerned, nor any favour has been extended to the respondents. It was a case of open bid and in the matter of PILs filed in contractual matters what is required to be considered by the Court is whether the aforesaid allotment or grant of lease will suffer the public cause. No doubt the Corporation is running in heavy losses and is at the stage of binding up and the corporation is not in a position to pay the salary as well as the retiral dues and is also not in a position to ply the buses on the roads in the M.P. and not having resources to run the corporation nor having sufficient number of buses. Therefore, when the corporation has invested a huge

amount of Rs.26 lacs for the construction of shops and the persons were not coming forward to take the shops on lease despite various advertisements relating to the calling for tenders, it appears that the corporation was in hurry to recover its money may be on account of financial constraints. Therefore they have taken that decision. If a business organization has taken such a decision that can not be questioned in a public interest litigation petition. But it is true that the bus stand whether owned by the Corporation or by the State Government must be fully equipped and must provide the facility and basic amenities to the citizens. We are conscious that the award of contract has not been challenged by any other bidder but the same has been challenged by public spirited persons, perhaps who are not aware with the facts of the matter. When we see the mater, prima facie it appears that there must be some malafides, but on scanning of the entire material we do not find that either the officers of the Corporation have committed any malafide or the respondents are responsible for any undue advantage. It is not the case where respondents had desired to take lease of the property but when there was an open advertisement and tenders were invited and after negotiations terms were settled and they entered into agreement and has paid the money, it can not be held that either the transaction is illegal or no prescribed procedure was followed in the matter.

14. In the case of BALCO Employees Union (Regd.) Vs. Union of India and Others, , lengthy argument was made before the Supreme Court on the question of scope of PIL in the contractual matter and on the question of locus standi. After considering the various submissions, Supreme Court has held that

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 mean 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 summarised 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, unorganised 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 counter productive.

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 have been, in recent times, increasingly instances of abuse of PIL. Therefore, there is a need to re-emphasize the parameters within which PIL can be resorted to by a 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 re-emphasize the same. Before we part with this general discussion in regard to locus standi, there is one point we would like to emphasis and it is, that cases may arise where there is undoubtedly public injury by the act or omission of the State or a public authority but such act or omission also causes a specific legal injury to an individual or to a specific class or group of individuals. In such cases, a member of the public having sufficient interest can certainly maintain an action challenging the legality of such act or omission, but if the person or specific class or group of persons who are primarily injured as a result of such act or omission, do not wish to claim any relief and accept such act or omission willingly and without protest, the member of the public who complains of a secondary public injury cannot maintain the action, for the effect of entertaining the action at the instance of such member of the public would be to foist a relief on the person or specific class or group of persons primarily injured, which they do not want.

85. "[T]he busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either for themselves or as proxy of others or for any other

extraneous motivation or for glare of publicity break the queue muffling their faces by wearing the mask of public interest litigation, and get into the courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the courts and as a result of which the queue standing outside the doors of the court never moves which piquant situation creates a frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system.

15. In the case of Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others, , the Supreme Court has held:

17. Normally before such a project is undertaken, a detailed consideration of the need, viability, financing and cost-effectiveness of the proposed project and offers received takes place at various levels in the Government. If there is a good reason why the project should not be undertaken, then the time to object is at the time when the same is under consideration and before a final decision is taken to undertake the project. If breach of law in the execution of the project is apprehended, then it is at the stage when the viability of the project is being considered that the objection before the appropriate authorities including the court must be raised. We would expect that if such objection or material is placed before the Government, the same would be considered before a final decision is taken. It is common experience that considerable time is spent by the authorities concerned before a final decision is taken regarding the execution of a public project. This is the appropriate time when all aspects and all objections should be considered. It is only when valid objections are not taken into account or ignored that the court may intervene. Even so, the court should be moved at the earliest possible opportunity. Belated petitions should not be entertained.

16. In the case of Narmada Bachao Andolan Vs. Union of India and Others, , it was held by the Supreme Court that

In respect of public projects and policies which are initiated by the Government the courts should not become an approval authority. Normally such decisions are taken by the Government after due care and consideration. In a democracy welfare of the people at large, and not merely of a small section of the society, has to be the concern of a responsible Government. If a considered policy decision has been taken, which is not in conflict with any law or is not mala fide, it will not be in public interest to require the court to go into and investigate those areas which are the function of the executive. For any project which is approved after due deliberation the court should refrain from being asked to review the decision just because a petitioner in filing a PIL alleges that such a decision should not have been taken because an opposite view against the undertaking of the project, which view may have been considered by the Government, is possible. When two or more options or views are possible and after considering them the Government takes a policy decision it is then not the function of the court to go into the matter afresh and, in a way, sit in appeal over such a policy decision.

17. In the case of Chairman and M.D., B.P.L. Ltd. Vs. S.P. Gururaja and Others, , PIL was filed to challenge the allotment of acquired land by statutory authority. It was held that there can not be any interference if there had been fair play in action even after due application of mind in single window system - held - can not be assailed.

18. In the case of Tata Cellular v. Union of India 1994 (6) SCC 651, the Supreme Court has held

The Court does not sit as a court of appeal but merely reviews the manner in which the decision was made. The court does not have the expertise to correct the administrative decision. The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. The decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts. The Government must have freedom of contract, in other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness.

19. In the case of Netai Bag and Others Vs. The State of West Bengal and Others, , the court held that

Though the State cannot escape its liability to show its actions to be fair, reasonable and in accordance with law, yet wherever challenge is thrown to any of such action, initial burden of showing the prima facie existence of violation of the mandate of the Constitution lies upon the person approaching the court.

20. In the case of R and M Trust Vs. Koramangala Residents Vigilance Group and Others, , the PIL was filed to challenge the allotment of plots on lease cum sale agreement for allotment of building sides entered into by Improvement Trust Board/Development Authority with private parties. It was held -

Once allotment is made by lessor and full payments made and terms and conditions of the agreement complied with by lessee, at the end of ten years, final agreement of outright sale to be entered into by lessor conferring full title to the lessee.

After entering into final agreement, granting of permission for raising of multi-storeyed building on the site was not prohibited.

Court should entertain PIL in very rare cases where public at large stand to suffer.

21. The question of locus standi of petitioner was also considered in in the case of T.N. Godavarman Thirumulpad v. Union of India (2006) 5 SCC 28, the Supreme Court has held that:

Howsoever genuine a cause brought before a court by a public interest litigant may be, the court has to decline its examination at the behest of a person, who, if fact, is not a public interest litigant and whose bona fides and credentials are in doubt.

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 provisions, but not for personal gain or private profit or political motive or any oblique consideration.

22. Supreme Court has repeatedly held that 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. Court must do justice by promotion of good faith, and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good.

23. Consequently, no case is made out to interfere in the agreement already executed between the parties. As discussed above, in nutshell at the most the petitioner may raise a question of public amenities available at the bus stand, though the corporation has already stated in its return that the public amenities and basic facilities like toilet, bathroom, waiting room, canteen, parking, book stall, tea stalls etc. are available at the bus stand. As it was argued that adjoining to the bus stand enough land is available in possession of the Corporation for further development of the bus stand as well as the basic amenities, therefore this petition can be disposed of with the following directions:

(1) That in future if the Corporation is required to maintain the bus stand it will provide basic facilities and amenities to the citizen like; toilet, bathroom, waiting room, canteen, parking, book stall, tea stalls etc. and other shops;

(2) Now looking to the number of buses and for the convenience of the citizens approaching to the bus stand, corporation will again re-examine and reassess the question of construction of further shops and develop further facilities at the Bus Stand.

(3) In case of any breach in terms and conditions of the lease agreement, the Corporation is always free to take appropriate steps.

(4) At the time of renewal of lease corporation may again reconsider the question of its need and requirement of facilities and corporation is further directed to maintain the cleanliness and to take care for the comfort and convenience of the citizens and passengers.

With the aforesaid directions, this petition is disposed of.

