
(2018) 09 CAL CK 0082

In the Calcutta High Court

Case No : Writ Petition No. 19364 (W) of 2018

Dyutiman Banerjee & Anr

APPELLANT

Vs

State of West Bengal & Ors

RESPONDENT

Date of Decision : 28-09-2018

Acts Referred:

High Court Rules, 2004 — Rule 56
Constitution of India, 1950 — Article 226

Citation : (2018) 09 CAL CK 0082

Hon'ble Judges : Debasish Kar Gupta, J; Shampa Sarkar, J

Bench : Division Bench

Advocate : Samim Ahammed, Arka Maiti, Utsav Datta, Kishore Dutta, Abhratosh Majumdar, Sirsanya Bandopadhyay, Arun Kumar Nag, Domingo Gomes

Final Decision : Dismissed

Judgement

Let the affidavit-of-service filed by the learned Advocate appearing on behalf of the petitioners in Court today be kept with the record.

This is an application filed under Article 226 of the Constitution of India by two learned Advocates practising in this Court, namely, Dyutiman Banerjee

and Nepesh Majhi, with the following prayers:

(a) Issue a writ of and/or in the nature of Mandamus directing and/or commanding to constitute a special investigating team to conduct an independent

enquiry and/or to conduct a judicial inquiry to find out the reasons of the firing of bullets at Daribhit High School on September 20, 2018 leading to the

death of Rajesh Sarkar and Tapash Burman and fix up the responsibility of the person concern and initiate an enquiry and submit the report to the

Honâ??ble Court;

(b) Issue a writ of and/or in the nature of mandamus directing and/or

commanding the concerned authority to hand over the investigation into the firing at Daribhit High School to the special investigating team or the inquiry authority so constituted;

(c) Issue a Writ of and/or in the nature of Prohibition prohibiting the respondent authorities concerned, to not cause any destruction and/or tampering

of the evidences pertaining to this case;

(d) Issue a Writ of and/or in the nature of Mandamus by directing the respondents education department to take appropriate step to investigate into the issue relating to the recruitment and subsequent incidents and further direct to take steps against the erring officers;

(e) Issue Rule Nisi in terms of Prayers (a), (b), (c) and (d) above;

(f) Pass an interim order by directing the respondent police authorities to file report as to investigation, if any conducted by the police authorities into

the case;

(g) Pass an Ad-interim order in terms of prayers made herein above;

(h) Costs and other incidentals thereto;

(i) And/or to pass such other or further or further order or order as Your Lordships may deem fit and proper.

Mr. Samim Ahammed, learned Advocate appearing on behalf of the petitioners, submits that the petitioners ascertained from the information available

in social media as also in number of daily newspapers, including one daily vernacular, namely, Ananda Bazar Patrika that an incident of death of two

young persons allegedly due to firing by the members of the police force occurred near Daribhit High School, Police Station " Islampur, District "

Uttar Dinajpur. West Bengal. According to Mr. Ahammed, the family members of those two deceased persons are unable to approach this Court to

enforce their constitutional and fundamental rights out of fear of prosecution by the police authorities. According to Mr. Ahammed, the incident of

opening fire at the instance of the police happened in violation of law. It is also the contention of Mr. Ahammed that the police personnel are arresting

innocent people of the locality concerned indiscriminately and especially those who had approached the family members of the aforesaid two

deceased persons on humanitarian grounds.

It is the prayer of the petitioners before this Court to constitute a special

investigating team to conduct an independent enquiry and/or to conduct a judicial inquiry to find out the reasons of firing of bullets at Daribhit High School on September 20, 2018, as a consequence of which, the death of two young persons occurred and to fix the responsibility of the person concerned.

A preliminary objection is taken by Mr. Kishore Dutta, learned Advocate General, West Bengal appearing on behalf of the State respondents.

According to him, filing of an application under Article 226 of the Constitution of India by a busy body is not permissible. It is submitted by the learned

Advocate General that when a person undertakes a research work with regard to an incident of violation of any right guaranteed by the Constitution

of India or any other legal right and arrived at a conclusion that the person concerned, who is the victim of the situation, is not in a position to approach

the Court due to poverty or ill-health or otherwise, it is open for the Court to make a relaxation with regard to the question of locus standi to espouse

such a cause before the Court. According to him, such a petition must contain adequate pleadings furnishing information for ascertaining the

authenticity of the cause espoused before the Court of law by way of public interest litigation. It is also submitted by him that this public interest

litigation is merely based on the information furnished in the newspapers. According to him, the Honâ??ble Supreme Court of India deprecated time

and again entertaining of public interest litigations on the basis of the information furnished in the newspapers or in any other similar media.

It is submitted by learned Advocate General that the incident occurred at 15:10 hours on September 20, 2018 and FIR bearing Islampur Police Station

Case No. 611 of 2018 was lodged suo motu by the concerned police authority on the same day at 23:35 hours. It is further submitted by him that the

entire case has now been handed over to the Criminal Investigation Department, West Bengal on September 25, 2018. Reliance is placed by the

learned Advocate General on the decision of State of Narmada Bachao Andolan â?? Vs. â?? State of Madhya Pradesh & Ors. reported in (2011) 7

SCC 639, on the decision of S.P. Anand â?? Vs. - H. D. Deve Gowda & Ors. reported in AIR 1997 SC 272 and on the decision of Kushum Lata â??

Vs. â?? Union of India & Ors. reported in (2006) 6 SCC 180 in support of his contentions.

Appearing on behalf of the respondent no.7, Ananda Bazar Patrika, a daily in

vernacular, it is submitted by Mr. Domingo Gomes, learned Advocate that the respondent no.7 is not a party necessary for adjudication of the issue involved in the matter. According to the settled principles of law, he prays for expunging the name of the respondent no.7 from the cause title of this writ application. We have heard the learned Advocate appearing on behalf of the respective parties in this matter at length on the point of locus standi of the petitioners to approach the Court. We have given our thoughtful consideration to that aspect.

At the very outset, the provision of Rule 56 of the Rules of High Court at Calcutta relating to application under Article 226 of the Constitution of India is quoted below for adjudication of the question of locus standi of the petitioners:

â??56. Definition of Public Interest Litigation:- Public Interest Litigation shall include a litigation the subject matter of which is a legal wrong or a legal injury caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is, by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, and for redressal of which any member of the public not having any personal interest in the subject matter presents an application for an appropriate direction, order or writ in this Court under Article 226.

Notwithstanding anything contained above, in any appropriate case, though the petitioner might have moved a Court in his private interest and for redressal of personal grievances, the Court in furtherance of the public interest involved therein may treat the subject of litigation in the interest of justice as a public interest litigation.â??

It is not in dispute that the petitioners are two learned Advocates practising in this Court. According to their residential addresses disclosed in the cause title of this writ application, the petitioner no.1 is residing at Krishnapur, Kolkata â?" 700 101 and the petitioner no.2 is residing in Village â?" Chhatni, District â?" North 24 Parganas. Those places are not near the place of incident, where the death of two unfortunate young persons occurred on September 20, 2018.

In order to ascertain the nature of research work undertaken by the petitioners, it is profitable to quote paragraph 2 of the writ application and the same is quoted below:

2. Petitioners state that they are deeply perturbed by incident of police firing at the school premises and also the death of two young students in Islampur as a result of such police firing. It has come to the knowledge of the petitioners that at present the guardians of the minor students and the family members of the said young students are unable to approach this Hon'ble Court to enforce their Constitutional and Fundamental rights in fear of persecution by the respondent police authorities. Inasmuch as after the said incident the police personnel are randomly arresting innocent persons who had approached the family members of the deceased on humanitarian grounds and/or persons completely unconnected with the case. Therefore, the petitioners are constrained to move this Public Interest Litigation.

It is a settled principle of law that in a public interest litigation, the litigant has to lay a factual foundation of the statement made in the writ application and such information furnished by him should not be vague and indefinite. At the same time, the Court must be aware of the possibility to approach the Court to have a fishing and roving enquiry.

Reference may be made to the decision of *Narmada Bachao Andolan* (supra) and the relevant portion of the above decision is quoted below:

13. Strict rules of pleading may not apply in PIL, however, there must be sufficient material in the petition on the basis of which the court may proceed. The PIL litigant has to lay a factual foundation for his averments on the basis of which such a person claims the reliefs. The information furnished by him should not be vague and indefinite. Proper pleadings are necessary to meet the requirements of the principles of nature justice. Even in PIL, the litigant cannot approach the court to have a fishing or roving enquiry. He cannot claim to have a chance to establish his claim. However, the technicalities of the rules of pleading cannot be made applicable vigorously. Pleadings prepared by a layman must be construed generously as he lacks the standard of accuracy and precision particularly when a legal wrong is caused to a determinate class. (Vide *a. Hamsaveni v. State of T.N.*, *Ashok Kumar pandey v. State of W.B.*, *Prabir Kumar Das v. State of Orissa* and *A.*

Abdul Farook v. Municipal Council, Perambalur.)â??

In the instant case, we repeatedly asked Mr. Samim Ahammed, learned Advocate appearing on behalf of the petitioners that what is the profession

and/or occupation of the fathers of the deceased persons and what are the reasons that prevented them to approach this Court? What are the

financial conditions of those two unfortunate fathers? What are the basis of the information of the petitioners to allege that there was opening of fire at

the instance of the police violating the provisions of law? Who are the innocent people of the locality arrested by the police due to their conduct of

showing their sympathy to the bereaved families? Whether any application is made under Right to Information Act before any authority to know what

step has been taken in respect of the letter of complaint dated September 21, 2018 written to the State Authorities by the father of one of the

deceased persons?

It is a matter of surprise for the Court that repeatedly Mr. Samim Ahammed prayed for granting leave to ascertain those information from the persons

concerned by adjourning the hearing of this case and to allow him to file supplementary affidavit to this writ application for meeting the queries of the

Court after obtaining those information from the persons concerned. We are of the opinion that in view of the law laid down by the Honâ??ble

Supreme Court of India, he has failed to prove his locus standi to approach a Division Bench of this Court for granting his prayer. It is also the settled

principles of law that a person seeking to espouse a public cause should not rush to the Court without undertaking a research even if he is qualified or

competent to raise the issue. The Honâ??ble Supreme Court gave a caution that in such a situation, a good cause can be lost if the petitions are filed

on half-baked information without proper research or by persons, who are not qualified and/or competent to raise such issues as the rejection of such

petition may affect third party right and the relevant portion of the same as decided in the matter of S.P. Ananda (supra) is quoted below:

â??18. Before we part, we cannot help mentioning that on issues of constitutional laws, litigants who can lay no claim to have expert knowledge in

that field should refrain from filing petitions, which if we may say so, are often drafted in a casual and cavalier fashion giving an extempore

appearance not having had even a second look. This is the impression that one

gets on reading the present petition. It is of utmost importance that those who invoke this Court's jurisdiction seeking a 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, by filing a series of petitions refusing to accept the Court's earlier decisions as concluding the point. We say this because when we drew the attention of the petitioner to earlier decisions of this Court, he brushed them aside, without so much as showing willingness to deal with them and without giving them a second look, as having become stale and irrelevant by passage of time and challenged their correctness on the specious plea that they needed reconsideration. Except for saying that they needed reconsideration he had no answer to the correctness of the decisions. Such a casual approach to considered decisions of this Court even by a person well-versed in law would not be countenanced. Instead, as pointed out earlier, he referred to decisions having no bearing on the question, like the decisions on cow slaughter cases, freedom of speech and expression, uniform civil code, etc.; we need say no more except to point out that indiscriminate use of this important lever of public interest litigation would blunt the lever itself.

From the discussions made hereinabove, we have no hesitation to say that none of the petitioners took the trouble to undertake the research work for

espousing the cause and adequate information with regard to the steps taken by the machinery prescribed under the law, more particularly under the

Code of Criminal Procedure. Another aspect of the matter cannot be lost sight of that the petitioners made two newspapers including one daily

vernacular, namely, Ananda Bazar Patrika and the Indian Express, the respondent nos.7 and 8 respectively in this writ application. On query we have

ascertained from Mr. Samim Ahammed, learned Advocate appearing on behalf of the petitioners that the petitioners relied upon the newspaper

information and that is why they have been made parties for substantiating their stand. The law is well settled in this regard. It is the observation of the

Apex Court in *Kushum Lata* (supra) that a petition based on unconfirmed news report without verifying their authenticity should not normally be

entertained. The relevant portions of the above decision is quoted below:

“17 As observed by this Court in several cases, newspaper reports do not constitute evidence. A petition based on unconfirmed

news reports, without verifying their authenticity should not normally be entertained. As noted above, such petitions do not provide any basis for

verifying the correctness of statements made and information given in the petition. It would be desirable for the courts to filter out the frivolous

petitions and dismiss them with costs as aforesaid so that the message goes in the right direction that petitions filed with oblique motive do not have

the approval of the courts.”

At the cost of repetition, let it be recorded here that according to the submission of Mr. Samim Ahammed, the main source of his information is the

newspaper reporting and electronic media. Therefore, the petitioners failed to cross the hurdle of satisfying the Court with regard to their *locus standi*.

The petitioners have also failed to produce any material before us, on the basis of which we can interfere with the ongoing investigation. Before

parting with, let it be recorded that according to the settled principles of law, a party to a proceeding is necessary when his presence is required for

proper and full adjudication of that proceeding or that there is a possibility that he will be adversely affected by the decision of such proceeding.

The two petitioners being the lawyers added two newspapers as parties to this

proceeding and failed to satisfy the queries of the Court as to the reason for making those two newspapers as parties. Therefore, we have no other alternative but to hold that this writ application is not only misconceived but has been filed for a purpose other than espousing the cause of public interest. Accordingly, this writ application is summarily dismissed. There will be, however, no order as to costs. Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.