
(2002) 08 DEL CK 0283

In the Delhi High Court

Case No : C.W.P. No. 3761 of 2002

Forum for Justice and Peace, Regd. and Another

APPELLANT

Vs

Videsh Sanchar Nigam Limited and Others

RESPONDENT

Date of Decision : 06-08-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 143(1), 19(1), 19(6), 21

Contract Act, 1872 — Section 70

Telegraph Act, 1885 — Section 4, 4(1)

Citation : (2002) 08 DEL CK 0283

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : R.K. Maheshwari, Ritu Rastogi and Ajay Pandey, for the Appellant; Rajiv Nayyar, Senior Advocate, Mahesh Aggarwal, for R-1/VSNL, K.K. Sud, A.S.G., R.V. Sinha, Neeraj Jain for R-2/UOI, P. Chidambaram, Senior Advocate, Ritu Bhatia and Ajoy Roy for R-3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—In this writ petition, which is in the nature of public interest litigation, the petitioner has inter alias questioned sale of some shares of Videsh Sanchar Nigam Limited (hereinafter for the sake of brevity referred to as "VSNL") by way of disinvestments.

2. VSNL is a company registered under the Companies Act, 1956. Its shares are listed in several stock exchanges of India as also in New York Stock Exchange. Till February, 2002 its 53% of the equity shares were held by the Union of India, i.e., the respondent No. 2 herein.

According to the petitioner, from various newspaper reports, it appears that the private respondents herein had entered into an agreement some time in February, 2002 whereby and whereunder the Government agreed to sell up to it, 25% of its equity shareholding under disinvestments plan propounded by it. The petitioner, however, is not in possession of a copy of the said agreement entered

into between the parties.

It is stated that in terms of the said agreement, the employees of VSNL are not to be retrenched for a specified period and in the event of reduction in strength of the employees of VSNL, efforts are required to be made to restore physically handicapped persons in employment of the Government as far as practical.

3. Mr. Maheshwari, who is petitioner No. 2 herein and has appeared in person, submitted that although he had written to the Ministry of Law to provide him with a copy of the said agreement and despite the fact that he was ready and willing to bear the requisite cost(s) Therefore, he had not been supplied the same.

It is not in dispute that the contention of the petitioner is entirely based on newspaper reports. The petitioner on the basis of newspaper reports stated:-

"From the newspaper reports, it appears that certain terms and conditions of the company were violated in as much as Tata Tele Services about 1200 crores in a week Tata Group of Companies. The petitioners are not in a possession of the agreement pertaining to loosely described as Share holders agreement and purportedly signed by President of India through Director, Ministry of Communication and Information Technology having its registered office amongst others at Sanchar Bhawan, Parliament Street, New Delhi - 110001."

4. The contention of the petitioner is that such transactions are vocative of Articles 298 and 299 of the Constitution of India. It was urged that in the instant case the corporate veil should be lifted as the Government of India had been transferring its assets without seeking permission or taking into confidence the Parliament or public at large.

It has been contended that by reason of such transfer, the objectives of privatizing the public sector undertakings had not been achieved. It is averred that such transactions give rise to a suspicion that there had been some mishandling of a profit-making industry like VSNL.

It is further urged that in the matter of deal in question, transparency had not been maintained. It was pleaded:-

"32. The petitioners apprehend that there is some undisclosed deal between the Ministry of Telecommunication and the Tata Group of Industries, which has become sour, resulting into distancing away from the Minister of disinvestments from the Minister of Telecommunication. It appears that they took 10 days for getting a press conference on the issue of VSNL, under the huge pressure of BJP Government, on the Minister of disinvestments, to enable the Government to cover up the mistakes of the Minister of Telecommunication and present a pleasant face to the public at large that everything is good, fair."

The petitioner further urges:-

"33. That it is a fit case that this Hon"ble Court in exercise of extra ordinary writ

jurisdiction by this Public Interest Litigation will look into the skeletons under the Cup-Board and direct the respondents to file necessary documents, all concerned, all concerned with this deal of VSNL and UOI and another Chara Ghotala was in fact not brewing."

5. The petitioner contends that having regard to the fact that the shares purchased by the Tata Group had not been invested in a fair manner, the Court should invoke the provisions of the doctrine of unjust enrichment as envisaged in Section 70 of the Indian Contract Act, 1872.

6. Mr. Maheshwari would submit that the Supreme Court in BALCO Employees Union (Regd.) Vs. Union of India and Others, had not taken into consideration the nature of the Executive Order for transferring the assets of BALCO as the same had not been disputed by the parties before the Supreme Court whereas the same has been done in the instant case.

According to Mr. Maheshwari, having regard to the dicta of the Apex Court in Reference By the President of India under Article 143(1) of the Constitution of India on the implementation of Indo-Pakistan Agreement relating to In Re: The Berubari Union and Exchange of Enclaves Reference Under Article 143(1) of The Constitution of India, whereas it has been held that the Preamble to the Constitution provides for the key to the minds of the framers of the Constitution where the words are found to be vague or their meaning is unclear. For the said purpose, the petitioner had also referred to I.C. Golak Nath and Others Vs. State of Punjab and Another, and His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, .

7. The petitioner had also filed an application for amendment of the writ petition inter alias praying for insertion of the following reliefs:-

"aa) Call for the records of the case from the respondents and to issue a writ of Certiorari and/or any other appropriate Writ, Order and/or direction for quashing and setting aside the Agreement(s) said to have been entered into by and between Union of India, Respondent No. 2, and Tata Sons Ltd., the Respondent No. 3 and/or any other person(s) and/or entities, disinvesting the statutory corporation entitled "Videsh Sanchar Nigam Ltd.", the Respondent No. 1 its shares, assets both movable and immovable and to further direct respondents No. 1 and No. 2 and/or its functionaries, officers, employees, servants, agents and/or anyone claiming under or through them and to render to this Hon"ble full facts and circumstances regarding and/or leading to the alleged Agreement(s) for disinvestments of the legal entity "VSNL", entered into by and between the respondents between February, 2002 and/or any other date or dates subsequent thereto of their alleged action(s);"

The said application, which was registered as C.M. No. 6573 of 2002, was allowed by a Vacation bench of this Court by an Order dated 17.06.2002.

8. The petitioner No. 1 is a society represented by the petitioner No. 2. The

entire contentions raised in the writ petition are based on the newspaper reports. The petitioner No. 2 in his affidavit affirmed in support of the writ petition states:-

"2. I state that the statement of facts contained in the synopsis and list of dates are true and correct to my knowledge, the facts urged in the accompanying amended writ petition are true and correct, derived from the various newspapers and that the grounds urged are believed to be true as per my knowledge. The last paragraph is in the nature of submissions to this Hon"ble Court."

The contents of the writ petition, Therefore, have not been verified in terms of the Rules framed by this Court.

9. The stand of the petitioner, as noticed hereinbefore, is difficult to be deciphered. The petitioner knows that it may not be possible for it to question the economic policy decision adopted by the Central Government having regard to the decision of the Apex Court in Balco Employees Union's case (Supra).

A writ petition cannot be based on the opinion of some persons, which are published in some newspapers. The Court in a public interest litigation may inter alias take cognizance of the grievances made only when the facts are placed before this Court to show that valuable constitutional and statutory rights have been violated. We fail to understand as to on what premise the transaction in question is sought to be challenged under Articles 298 and 299 of the Constitution of India may be invoked by a party, who claims an interest in the transaction in question, but only that basis a Public Interest Litigation would not be maintainable. We have also not been able to appreciate as to how the provisions of doctrine of unjust enrichment are attracted in a case of this nature.

10. The country since 1991 has adopted a liberal economic policy. Liberalisation to some may be opposed to social and economic justice, but by reason thereof only a public interest litigation cannot be entertained nor an enquiry in absence of some concrete facts can be directed.

The liberalisation process today is the result of the Indian government's consent to adhere to an IMF "stabilisation". When it approached the IMF in the late 1980's on the brink of an economic crisis, India, for a loan agreed to such a program, which out expenditure and imports and adopted a longer term SAP (Structural Adjustment Policy). SAP sought to open up the economy to international competition. SAP economic reforms included the privatization of public enterprises, devaluation of rupee by 2.5 percent, scrapping of the 1969 Anti Monopolies law i.e. MRTP Act, the abolition of subsidies and price control and cuts to social programs and public sectors. The process of liberalisation and resultant privatization was challenged in several cases not only as a policy but an improper implement mechanism.

11. In Mithilesh Garg, Vs. Union of India and others etc. etc., , the grant of stage carriage permits to private operators pursuant to the liberalisation policy was challenged on the grounds that it violated Article 19(1)(g) Article 14 of the

Constitution of India. The Supreme Court while holding that the grant was constitutional observed that:-

" The provision of the Act are in conformity with Article 19(1)(g) of the Constitution of India..... When the State has chosen not to impose any restriction under Article 19(6)there can be no cause for complaint by the existing petitioners. "

12. In *Dalmia Industries Ltd. and another Vs. State of U.P. and another*, , a writ was filed by the workers of U.P. State Cement Corp. requesting the Court to stop the privatization of the U.P. State Cement Corp. as it was done through an ordinance. The Apex Court upheld the privatization as the ordinance was enacted under Entry 42, List 3, Schedule 7 of the Constitution of India and was held not invalid on the ground of legislative incompetence.

13. In the case of *Delhi Science Forum and others Vs. Union of India and another*, , the grant of licenses by the state to non-government companies and foreign collaborated companies for establishing, maintaining and working of telecommunication system of the country pursuant to Government Policy of privatization of telecommunication was challenged on the ground of being violative of Article 14 of the Constitution of India.

Upholding the privatization and speaking on such the policy the Court held that:-

" Parliament has resolved a national policy of liberalisation and opening of the national gates for foreign investors.....unless any party satisfies the Court that the ultimate selection... ..has been vitiated, normally Court should be reluctant to interfere with the same. (Ibid at page. 414)"

14. In a relatively recent decision the Supreme Court in *Almira H Patel v. Union of India* (2002) 2 SCC 689, the Supreme Court upheld the entrustment of municipal work to private companies.

15. In *Balco Employees Union's case* (Supra) , the Apex Court observed:-

"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 summarized the extent of the jurisdiction which has now been exercised in 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, unorganized 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 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."

Referring to its various earlier decisions, the Apex Court noticed:-

"88. It will be seen that whenever the Court has interfered and given directions while entertaining PIL it has mainly been where there has been an element of violation of Article 21 or of human rights or where the litigation has been initiated for the benefit of the poor and the underprivileged who are unable to come to Court due to some disadvantage. In those cases also it is the legal rights, which are secured by the Courts. We may, however, add that Public Interest Litigation was not meant to be a weapon to challenge the financial or economic decisions, which are taken by the Government in exercise of their administrative power. No doubt a person personally aggrieved by any such decision, which he regards as illegal, can impugn the same in a Court of law, but, a Public Interest Litigation at the behest of a stranger ought not to be entertained. Such a litigation cannot per se be on behalf of the poor and the downtrodden, unless the Court is satisfied that there has been violation of Article 21 and the persons adversely affected are unable to approach the Court.

89. The decision to disinvest and the implementation thereof is purely an administrative decision relating to the economic policy of the State and challenge to the same at the instance of a busy-body cannot fall within the parameters of Public Interest Litigation."

As regards power of judicial review, the Apex Court, in no uncertain terms, held that this Court should not exercise its power of judicial review to interfere with the economic policies of the State.

The Apex Court further noticed that the assets including shares can be sold in a number of ways, i.e., in public auction, by tender(s), by sealed offer(s), or by negotiation.

As regards transparency, it was held:-

"67. It was contended by the learned Advocate General that the whole process lacked transparency. We are not able to appreciate this contention. The disinvestments of BALCO commenced with the recommendation by the disinvestments Committee in its record Report suggesting that the Government may disinvest BALCO. It is by global advertisement that the global Adviser and the strategic partner was chosen. At every stage, the matter was looked into by the IMG and ultimately by the Cabinet Committee on disinvestments. The system, which was evolved, was completely transparent. It was made known. Transparency does not mean the conducting of the Government business while sitting on the cross roads in public. Transparency would require that the manner in which decision is taken is made known. Persons who are to decide are not arbitrarily selected or appointed. Here we have the selection of the global adviser and the strategic partner through the process of issuance of global advertisement. It is the global Adviser who selected the valuer who was already on the list of valuers maintained by the Government. Whatever material was received was examined by high Power Committee known as the IMG and the ultimate decision was taken by the Cabinet Committee on disinvestments. To say that there has been lack of transparency, under these circumstances, is uncharitable and without any basis."

In view the aforesaid backdrop, the Apex Court concluded:-

"92. In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the Court.

93. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the Courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is the Parliament and not the Courts. Here the policy was tested and the Motion defeated in the Lok Sabha on 1st March, 2001.

94. Thus, apart from the fact that the policy of disinvestments cannot be

questioned as such, the facts herein show that fair, just and equitable procedure has been followed in carrying out this disinvestments. The allegations of lack of transparency or that the decision was taken in a hurry or there has been an arbitrary exercise of power are without any basis. It is a matter of regret that on behalf of State of Chattisgarh such allegations against the Union of India have been made without any basis. We strongly deprecate such unfounded averments, which have been made by an officer of the said State.

... ..

98. In the case of a policy decision on economic matters, the Courts, should be very circumspect in conducting any enquiry or investigation and must be most reluctant to impugn the judgment of the experts who may have arrived at a conclusion unless the Court is satisfied that there is illegality in the decision itself."

16. In the instant case, the petitioner has not made any research himself. Moreover, the allegations made in the present Public Interest Litigation are vague and based on some newspaper reports. The opinion of some authors be relate to their own opinion, which may be differed from by others.

What happened after the agreement was entered into is not a matter of this Court to consider in this Public Interest Litigation. The basic question, which was required to be gone into, was whether the disinvestments policy of the Central Government was a valid one.

17. Mr. Maheshwari referred to the provisions of Section 4 of the Telegraph Act, 1885, which reads thus:-

"4. Exclusive privilege in respect of telegraphs, and power to grant licenses. -

(1) Within India, the Central Government shall have the exclusive privilege of establishing, maintaining and working telegraphs:

Provided that the Central Government may grant a license, on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain or work a telegraph within any part of India:

Provided further that the Central Government may, by rules made under this Act and published in the Official Gazette, permit, subject to such restrictions and conditions as it thinks fit the establishment, maintenance and working-

(a) of wireless telegraphs on ships within Indian territorial waters and on aircraft within or above India, or Indian territorial waters, and

(b) of telegraphs other than wireless telegraphs within any part of India.

(2) The Central Government may, by notification in the Official Gazettee, delegate to the telegraph authority all or any of its powers under the first proviso to Sub-Section (1).

The exercise by the telegraph authority of any power so delegated shall be subject to such restrictions and conditions as the Central Government, may, by the notification think fit to impose."

However, we fail to understand as to how the aforesaid provision is applicable in the instant case. Section 4 of the Telegraph Act itself provides for grant of a license. It is not the contention of the petitioner that VSNL is not a licensee. In fact, the petitioner indirectly had taken the stand that VSNL, a public sector undertaking, was entitled to carry on its activities in terms of the provisions of the said Act.

By reason of the disinvestments to the extent of 25% of its equity shares, VSNL does not lose its corporate identity nor does it lose its license and thus it does not lose its right to carry on the business. This is not a case where the Court can lift the corporate veil for the purpose of finding out whether a public sector undertaking or a private sector undertaking is running the show. Whoever runs the show, the licensee remains the same, i.e. the company and its corporate status is not lost only because the shares have changed hands.

18. For the reasons aforementioned, we do not find any merit in this writ petition, which is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.