

**(2010) 01 PAT CK 0057**  
**In the Patna High Court**

Humlog Trust and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

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**Date of Decision :** 13-01-2010

**Acts Referred:**

**Citation :** (2010) 01 PAT CK 0057

**Final Decision :** Dismissed

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**Judgement**

Dipak Misra, C.J.—If there has been abuse of the process of public interest litigation in a Court in its conceptual essentiality and connotative eventuality, it can irrefragably be stated that the present litigation which has been styled as a "Public Interest Litigation" frescoes a pictue and projects the scenario in the complete sense inasmuch as it fits into the said compartment in an apple pie order. We have commenced the order with a prologue of this nature as the gradual undraping of the factual matrix would vividly so reveal.

2. The petitioner, "Humlog Trust", represented by its convener describing itself as pro bono publico has preferred the present writ petition stating that the petitioner is a registered trust under Societies Registration Act, 1860 and has been constituted to fulfill its objectives for peace and harmony, social well-being and is engaged in such activities which would fulfill general upliftment of human conditions. It also stands committed for improving the efficiency of functioning of the State and its instrumentalities. It is asserted that it is embedded to its commitments to ensure purity being maintained in the governance of the State and, whenever any act of impropriety or illegality has come to the notice of the trust, it has made relentless endeavours to raise it before the appropriate forum. It is contended that the trust had earlier preferred a writ petition forming the subject matter of CWJC No. 8014/2009, which was disposed of on 31-8-2009 with certain observations as the terms of contract had already expired.

3. It is asseverated that the respondents are indulged in illegal activities in awarding tenders for manufacture of liquors in the State of Bihar for extraneous considerations and tenders have been awarded to several ineligible and defaulter-

tenderers as a consequence of which loss has been caused to the State Exchequer. It is averred that the mandatory terms and conditions of the notice inviting tender have not been followed in requisite spirit and there has been manipulation at the stage of finalization of tender and further there has been conferral of exclusive privileges in a wholesale manner. A reference has been made to Tender Notice dated 26-2-2009 inviting tenders for grant of exclusive privilege for manufacture and supply of country liquor in 38 zones. The said notice inviting tenders incorporated certain clauses which related to eligibility criteria. It is put forth that the Scrutiny Committee scrutinized the tender papers and invited 13 tenders for negotiation for fixing the price and grant of privilege and all the 13 tenderers were granted the exclusive privilege. An order passed in favour of M/s. S.C.I India Ltd. has been brought on record as Annexure 5. As pleaded, several writ petitions bearing CWJC No. 7263/2009, CWJC No. 7182/2009 and CWJC No. 7059/2009 were filed before this Court challenging the award of contract to several grantees and notices were issued in the said writ petitions. All the said writ petitions were withdrawn by the writ petitioners. The withdrawal of the writ petitions were published in daily newspapers and it was also published that the norms have been violated with impunity and even ineligible tenderers were conferred with the grant. The trust, as put forth, decided to enquire into the whole matter relating to exclusive privilege and on enquiry it found that several grantees had been conferred privileges though they were not eligible for the same and, that apart, certain documents had been manipulated by them. Various allegations have been made how certain chosen distilleries have been given the privilege. In this factual backdrop, following reliefs have been sought:

(i) To hold a thorough enquiry into the process of grant and allotment of tender for manufacture and sale of country liquor by order of allotment dt. 21-6-2009 to several tenderers notwithstanding the facts that several of the tenderers had failed to comply with the basic mandatory terms and conditions of the notice inviting tender dated 26-2-2009, yet have been clandestinely permitted to add to their tender document even after the last day of tender and not only it appears deliberately the respondent authorities did not carry out scrutiny of the tender documents especially those relating to financial capacity before grant of license but, also after grant of though the respondent authorities under the mandate of Notice Inviting Tender were duty bound to do so.

(ii) To direct the respondents to forthwith hold full enquiry into the acts of omissions and commissions committed by the respondents responsible for processing and settling the tenders of grant of special privilege for manufacture and sale of country liquor pursuant to the Notice Inviting Tender dated 26-2-2009 and to take appropriate action against the guilty in accordance with law.

(iii) On receipt of the report pursuant to enquiry, quash the settlement granted to such of the allottees whose allotment was made pursuant to connivance and/or

on basis of extraneous consideration by the respondent authorities.

(iv) To pass such other order(s) as your Lordships may deem fit and proper in the facts and circumstances of the case.

4. If the prayer clause is appositely appreciated it would be clear as noon day that the petitioner-trust which is interested for fulfilling the local causes and general upliftment of the conditions of society and for ensuring high purity and morality has preferred the present writ petition to remove the dent, as conceived by it, in the trade of liquor. It is contended by Mr. Jitendra Singh, learned Sr. Counsel that though the grant of exclusive privilege has a different connotation but the fact remains that when such kind of privileges are granted causing loss to the State exchequer, the Court should interfere in public interest.

5. Mr. P.K. Shahi, learned Advocate General per contra, contended that the case of this nature does not come within the scope and ambit of public interest litigation and, in fact, it is an abuse of the process of the Court.

6. To appreciate the nature of the lis and the contentions advanced it is imperative to recapitulate two concepts, namely, the nature of trade of liquor and the purpose of public interest litigation.

7. In *State of M.P. and Others Vs. Nandlal Jaiswal and Others*, a two-Judge Bench of the Apex Court while expressing the view that Article 14 of the Constitution is attracted to grant of exclusive right or privilege for manufacture and sale of liquor as it involves State's largess. While so holding their Lordships proceeded to state as follows:

33. But, while considering the applicability of Article 14 in such a case, we must bear in mind that, having regard to the nature of the trade or business, the Court would be slow to interfere with the policy laid down by the State Government for grant of licences for manufacture and sale of liquor. The Court would in view of the inherently pernicious nature of the commodity allow a large measure of latitude to the State Government in determining its policy of regulating, manufacture and trade in liquor. Moreover, the grant of licences for manufacture and sale of liquor would essentially be a matter of economic policy where the Court would hesitate to intervene and strike down what the State Government had done, unless it appears to be plainly arbitrary irrational or mala fide. We had occasion to consider the scope of interference by the Court under Article 14 while dealing with laws relating to economic activities in *R.K. Garg v. Union of India* (1982) 1 SCR 947 : AIR 1981 SC 2138....

8. In *Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others*, , the Apex Court has opined that the trade of liquor is inherently vicious and pernicious and a citizen has no fundamental right to trade or business in liquor.

9. In *P.N. Krishna Lal and Others Vs. Govt. of Kerala and Another*, the Apex Court has opined thus:

28....dealing in liquor inherently pernicious or dangerous goods which endangers the community or subversive of morale, is within the legislative competence under the Act. The State has thereby the power to prohibit trade or business which is injurious to the health and welfare of the public and the elimination and exclusion from the business is inherent in the nature of liquor business. The power of the legislature to evolve the policy and its competence to raise presumptive evidence should be considered from this scenario.

10. In *Secretary to Govt., Tamil Nadu and Another Vs. K. Vinayagamurthy*, their Lordships have expressed as follows:

7....So far as the trade in noxious or dangerous goods are concerned, no citizen can claim to have trade in the same and the intoxicating liquor being a noxious material, no citizen can claim any inherent right to sell intoxicating liquor by retail. It cannot be claimed as a privilege of a citizen of a State. That being the position, any restriction which the State brings forth, must be a reasonable restriction within the meaning of Article 19(6) and reasonableness of the restriction would differ from trade to trade and no hard and fast rule concerning all trades can be laid down....

11. In *State of Punjab and Another Vs. Devans Modern Breweries Ltd. and Another*, their Lordships reiterated the fact that trade in liquor is considered inherently noxious and pernicious.

12. In *Ashok Lanka and Another Vs. Rishi Dixit and Others*, a two-Judge Bench of the Apex Court has opined as follows:

89. There cannot, however, be any doubt or dispute that having regard to the several decisions of this Court e.g. *The State of Bombay Vs. R.M.D. Chamarbaugwala*, *Fatehchand Himmatlal and Others Vs. State of Maharashtra*, ; *Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others*, *B.R. Enterprises Vs. State of U.P. and Others*, ; *State of Andhra Pradesh and others*, etc. *Vs. McDowell and Co. and others*, etc., *State of Punjab and Another Vs. Devans Modern Breweries Ltd. and Another*, trade in liquor is considered to be *res extra commercium* although, tobacco produce has not been declared so. (See *Godawat Pan Masala Products I.P. Ltd. and Another Vs. Union of India (UOI) and Others*, The State while exercising its power of parting with its exclusive privilege to deal in liquor has a positive obligation that any activity therein strictly conforms to the public interest and ensures public health, welfare and safety. Strict adherence to the requirement to comply with the statutory provisions must be considered from that angle.

13. In *Gupta Modern Breweries Vs. State of Jammu and Kashmir and Others*, a two-Judge Bench of the Apex Court placing reliance upon *Khoday Distilleries Ltd.* (supra) opined that in dealing with the liquor trade the Government cannot be manifestly unjust or arbitrary and the same can be challenged on the touchstone of Article 14 of the Constitution.

14. The basic purpose of our referring to the aforesaid decisions relating to the trade of liquor and the role of the State is that the trade of liquor by its very nature is a pernicious one and the State has the absolute right to confer the privileges but it cannot act in an unjust and arbitrary manner. It is obligatory on the part of the State to follow the Act and the Rules and cannot take decisions in a capricious and unreasonable manner which would invite the wrath and frown of Article 14 of the Constitution.

15. Presently, we think it seemly to refer to certain citations which relate to public interest litigation.

16. In Charan Lal Sahu Vs. Union of India, it has been held as follows:

36. Therefore, conceptually and from the jurisprudential point of-view, especially in the background of the preamble to the Constitution of India and the mandate of the directive principles, it was possible to authorise the Central Government to take over the claims of the victims to fight against the multinational corporation in respect of the claims. Because of the situation the victims were under disability in pursuing their claims in the circumstances of the situation fully and properly. On its plain terms the State has taken over the exclusive right to represent and act in place of every person who has made or is entitled to make a claim for all purposes connected with such claim in the same manner and to the same effect as such person. Whether such provision is valid or not in the background of the requirement of the Constitution and the Code of Civil Procedure, is another debate. But there is no prohibition or inhibition, in our opinion, conceptually or jurisprudentially for the Indian State taking over the claims of the victims or for the State acting for the victims as the Act has sought to provide. The actual meaning of what the Act has provided and the validity thereof, however, will have to be examined in the light of the specific submissions advanced in this case.

17. In AIR 1991 420 (SC) it has been held as follows:

7....Public interest litigation cannot be invoked by a person or body of persons to satisfy his or its personal grudge and enmity. If such petitions under Article 32, are entertained it would amount to abuse of process of the Court, preventing speedy remedy to other genuine petitioners from this Court. Personal interest cannot be enforced through the process of this Court under Article 32 of the Constitution in the garb of a public interest litigation. Public interest litigation contemplates legal proceeding for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law. A person invoking the jurisdiction of this Court under Article 32 must approach this Court for the vindication of the fundamental rights of affected persons and not for the purpose of vindication of his personal grudge or enmity. It is duty of this Court to discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extraordinary jurisdiction of this Court for personal matters under the garb of the public

interest litigation, see *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, ; *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, at p. 331 : AIR 1987 SC 1109; *Ramsharan Autyanuprasi and another Vs. Union of India and others*, and *Chhetriya Pardushan Mukti Sangharsh Samiti Vs. State of U.P. and others*,

18. In the *Janata Dal Vs. H.S. Chowdhary and Others*, the Apex Court while dealing with the concept of public interest litigation expressed thus:

47. We shall now briefly deal with the scope and object of "public interest litigation" (PIL), the horizon of which is widely extended and which at present constitutes a new chapter in justice delivery system acquiring a significant degree of importance in the modern legal jurisprudence practiced by Courts in many parts of the world, based on the principle, "Liberty and Justice for All".

19. In *Ashok Kumar Pandey Vs. The State of West Bengal and Others*, it has been held as follows:

12. 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 bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the passtime of meddling with judicial process either by force of habit or from improper motives. 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.

13. The council for Public Interest Law set up by the Ford Foundation in USA defined the "public interest litigation" in its report of Public Interest Law, USA, 1976 as follows:

Public Interest Law is the name that has recently been given to efforts provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others.

20. In *Dr. B. Singh Vs. Union of India (UOI) and Others*, it has been held as

follows:

5. When there is material to show that a petition styled as a public interest litigation" is nothing but a camouflage to foster personal" disputes or vendetta to bring to terms a person, not of ones liking, or gain publicity or a facade for blackmail, said petition has to be thrown out. Before we grapple with the is-,sues involved in the present case, we feel it necessary to consider the issue regarding the "public interest" aspect. Public interest litigation which had 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" or the latest trend "paise income litigation". If not properly and strictly regulated at least in certain vital areas of spheres and abuse averted it becomes also a tool in unscrupulous hands to release vendetta and wreck vengeance, as well to malign not only an incumbent to be in office but demoralise and deter reasonable or sensible and prudent people even agreeing to accept highly sensitive and responsible office, s for fear of being brought into disrepute with baseless allegations. There must be real and genuine public interest involved in the litigation and concrete or credible basis for maintaining a cause before Court and not merely an adventure of knight errant borne out of wishful thinking. It cannot also 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. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. The credibility of such claims or litigations should be adjudged on the creditworthiness of the materials averred and not even on the credentials claimed of the person moving the Courts in such cases. 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 on any oblique consideration. These aspects were highlighted by this Court in Janata Dal Vs. H.S. Chowdhary and Others, : Janata Dal Vs. H.S. Chowdhary and Others, and State of Maharashtra and Others Vs. Uttamrao Rayala Nikam, A writ petitioner who comes to the Court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective. See The Ramjas Foundation and Others Vs. Union of India and Others, and K.R. Srinivas Vs. R.M. Premchand and Others,

21. In N.K. Prasada Vs. Government of India and Others, the Apex Court referred to the concept of public interesY"as has been stated in Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others, Chairman and M.D., B.P.L. Ltd. Vs. S.P. Gururaja and Others, and Onkar Lal Bajaj Vs. Union of India (UOI) and Another etc. etc., and, eventually, their Lordships expressed the views as follows:

30. We are pained to see how the forum of public interest litigation is being abused. This Court recently had also the occasion to notice the same. (See Ashok

Kumar Pandey Vs. The State of West Bengal and Others, and Dr. B. Singh Vs. Union of India (UOI) and Others,

22. From the aforesaid pronouncements, in law, it can safely be deduced that the public interest litigation, in its denotative sense basically pertains to, interest of the collective at large and such collective who are socially so backward and sans means to have access to Court and at that stage a public spirited person rises to the occasion to canvass the cause of the marginalized section for their benefit. In addition to the same, in its connotative expanse, it encapsules and engulfs such subject matters which are of social importance and inherently relate to socio-economic, socio-cultural and embedded humanitarian facets like environmental pollution, "ecological balance", preservation of national interest, maintenance of roads, hospitals, availability of facilities of education and such other categories which clearly point to the public interest without any kind of design. It is apt to state here the aforesaid spheres are only some of it have been mentioned in an illustrative manner. But, a pregnant one, it can be said with certitude that the public interest litigation was never conceived of to settle scores in a Court of law or to give vent to personal causes to pyramid an eventuality in the guise of fight against the "City Halls", to ascribe utterances in the name of loss to the exchequer totally ostracizing the subject matter, to put forth a stand and stance that the Court under exercise of its extraordinary jurisdiction will make a roving enquiry to find out the defects and the irregularities in every decision making process and search for dents and concavities in every action as if the Court is required to find out the sanctuary of errors even though the subject matter relates to a different realm.

23. We have dwelled upon two facets extensively. One, the nature of the trade and the other, the concept of public interest. The asseverations in the writ petition relate to various irregularities committed in granting the exclusive privileges in violation of certain statutory provisions. The sixty-four million dollar question that emanates for consideration is whether this Court shall use the weapon of public interest litigation at the behest of a trust to enter into the realm of enquiry whether there has been violation of statutory provisions in grant of exclusive privileges to the liquor vendors. True it is, the State cannot act on its own whim and fancy but is bound by the Act, Rules, Regulations and the Circulars governing the field pertaining to the said trade but, a significant one, the persons, who are affected because of infraction of any of the statutory provisions or any illegal grant, can always come forward and fight for their grievances. They do not belong to that strata of society who cannot fight for their interest or protect their lights however constricted it may be. A trust, as we are disposed to think, cannot come forward to espouse such a cause in the garb of loss to the public exchequer. That will be not in accord with the quintessential concept of public interest litigation. It would tantamount to structuring a public interest where there is remotely none and we unhesitatingly say so.

24. After so holding ordinarily we would have dismissed the writ petition and

possibly would have imposed exemplary costs but as the trust has preferred such a public interest litigation for the first time may be fostering some kind of innovative proclivity we refrain from imposing costs but caution the trust to understand the purport of public interest before knocking at the doors of the Court.

25. Consequently, the writ petition, being sans merit, stands dismissed without any order as to costs.