
(1996) 07 MP CK 0037

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 1269 and 1641 of 1995 and 805 and 866 of 1996

Jawarchand Poonamchand Dassaji

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 05-07-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 1 MPLJ 306

Hon'ble Judges : S.B. Sakrikar, J;A.R. Tiwari, J

Bench : Division Bench

Advocate : M. Dalal, in W.P. Nos. 1269 and 1641 of 1995, G.K. Patidar, in W.P. No. 805 of 1996 and M.K. Jain, in W.P. No. 866/1996, for the Appellant; Surjeet Singh, G.A. for respondent Nos. 1 to 3 in W.P. No. 1269 of 1995, S.J. Dhanji, for respondent No. 1, Surjeet Singh, G.A. for respondent No. 2 in W.P. No. 1641 of 1995, B.G. Nema, in W.P. No. 805 of 1996 and Surjeet Singh, G.A. for respondent Nos. 1 and 2 in W.P. No. 866/1996, for the Respondent

Final Decision : Dismissed

Judgement

A.R. Tiwari, J.

Embroided, the petitioners, acting pro bono publico, have filed these four petitions under Article 226 of the Constitution of India as Public Interest Litigation for final and interim reliefs Ex voto. It is apt to notice factual foundation and reliefs petition wise.

(a) WRIT PETITION No. 1269 OF 1995 :

The land, admeasuring 46.3 acres situate in Kesharbag, Indore, is in possession of respondent No. 4 (Shri Ahilyamata Gaushala). Respondent No. 3 [Competent Authority under Urban Land (Ceiling and Regulation) Act, 1976] accorded permission u/s 20 of this Act for transfer of this land to respondent No. 5 (Devi Adhilya New Cloth Market Co. Ltd.) in Case No. 1216-A/90/89-90 on 29-6-1994. Labelling this permission as without jurisdiction and treating the permitted

transfer as causing public injury, the petitioner claiming to be an Artist and Honorary Secretary, has sought incineration of permission and consequent alienation and order of restraint against any activity on this land pending final disposal. Respondents Nos. 1 to 3 opposed the petition and questioned locus standi of the petitioner.

(b) WRIT PETITION No. 1641 OF 1995 :

Respondent No. 1 (Commissioner, Indore Municipal Corporation) assigned the construction work to newly added respondents Nos. 3 and 4 without calling tenders in terms of section 69(3) of the Municipal Corporation Act and thus incurred expenditure in violation of section 75 of this Act. Respondent No. 2 failed to check and take appropriate action against respondent No. 1 despite notice dated 23-8-1995 (Annexure-"1"). Order for action is claimed and interim relief for recovery of amount so spent is sought. Respondents opposed the petition and dubbed the petition as mala fide.

(c) WRIT PETITION No. 805 OF 1996 :

Respondent No. 3 is engaged in business of sale of "Tulsi Mix Gutkas" and is exploiting pious names of Goswami Tulsidasji and Shri Ramcharit Manas in an effort to augment sales contrary to law. Photos of Tulsidasji and Ramcharit Manas are being displayed on Gutkas to attract more buyers and to play on feelings of the masses. Writ is claimed to prohibit such misuse and display. Ad interim writ is sought for this purpose. Respondent No. 1 on advance copy opposed tenability of petition as Public Interest Litigation.

(d) WRIT PETITION No. 866 OF 1996 :

The Assistant Settlement Officer (respondent No. 1), on application of respondents Nos. 3 to 7 against respondent No. 2 (State of Madhya Pradesh), passed the order on 28-5-1992 (Annexure-"A/1") in Case No. 57/B-121/91-92 permitting exchange of land particularised as S. No. 388/1 area 0.60 Are and S. No. 872/2 area 0.60 Are. Petitioners, five in number, felt that this permission infringed rights of residents of village Narvar and left their cattle in lurch. Petition is filed for quashment of Annexure-"A/1" and interim order is claimed against construction on this Government land. Respondents Nos. 1 and 2 have offered opposition on advance copy.

We have heard the petitioner and Shri Surjeet Singh, learned Government Advocate for respondents Nos. 1 to 3 in Writ Petition No. 1269 of 1995; Shri M. Dalai, learned counsel for the petitioner, Shri S. J. Dhanji, learned counsel for respondent No. 1 and Shri Surjeet Singh, learned Government Advocate for respondent No. 2 in Writ Petition No. 1641 of 1995; Shri G. K. Patidar, learned counsel for the petitioner and Shri B. G. Nema, learned counsel for respondent No. 1 in Writ Petition No. 805 of 1996; and Shri M. K. Jain, learned counsel for the petitioner and Shri Surjeet Singh, learned Government Advocate for respondents Nos. 1 and 2 on question of admission and interim reliefs as claimed

on 4-7-1996 with specific emphasis on tenability or otherwise.

These petitions bear the insignia of Public Interest Litigation. Right at the threshold, it is apt to observe that the calendar of the Court is quite congested and this state of affair is further worsened by the inundation of such petitions. Attention can easily be focused on flux.

Yet the Court cannot sit with folded hands where valuable rights of those who are voiceless are found to be fouled or public injury of great magnitude is shown to be occasioned. But such instances cannot be prodigious in number and effluence has to be execrated.

The object behind permissibility of Public Interest Litigation is to ensure to an extent preservation and protection of fundamental or legal rights of those who cannot have resort to the Court on account of their misfortunes of poverty, disability or socially or economically disadvantaged position or to perish public injury of great magnitude. In entertaining such litigation, which is not in the nature of adversary litigation, the Courts have emolliated the rigour of procedure and evolved the position permitting easy access. After all, law has to be dynamic and procedure has to be dank. May be, for this view, in mind, Lord Tennyson once voted change and vetoed status quo in the undernoted lines :-

"Change is the law of Nature Ring out the old into New Lest one good custom should corrupt the whole World."

Despite heavy load of work, the Courts have thus welcomed petitions projecting proper causes for public good and requiring intervention. Legal methods have to exist to serve the society and to keep pace with changing times. Lord Delvin spoke of the English Judicial system in the under noted terms :-

"If our methods were as antiquated as our legal methods, we should be a bankrupt country."

The doctrine of locus standi has thus been appropriately enlarged so as to permit presentation of certain cases to safeguard public interest.

Democracy demands "good governance". Power, like any other thing, cannot be limitless. In Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, , it is elegantly observed that :

"The governing power, wherever located must be subject to the fundamental constitutional limitations."

Preamble to the Constitution of India clearly states that the people of India adopted, enacted and gave to themselves the Constitution on 26th day of November, 1949 which aims at securing to all its citizens justice, liberty and equality and at promoting among them all fraternity assuring the dignity of the individual and the unity and integrity of the Nation. Some 26 years later and 20

years before it was felt necessary to spell out fundamental duties as well. In new Part IV-A, Article 51A was inserted by the Constitution (Forty-second) Amendment Act, 1976, effective from 3-1-1977, to list ten fundamental duties of every citizen of our country. It is time to read, remember and ratiocinate the same.

While moving the draft of Constitution, Dr. B. R. Ambedkar spoke in the Constituent Assembly on 4th November, 1948 thus -

"Indeed, if I may say so, if things go wrong under the new Constitution, the reason will not be that we had a bad Constitution. What we will have to say is that Man was vile. Sir, I move."

The message is that man should not become vile and things should not go wrong. Evidently there is a point to panegyryze our constitutional system. But if things do go wrong here and there, then litigation, styled as one for public interest, in our view, is not the panacea and disease, if any, must have its cure elsewhere. In *Sundarjas Kanyalal Bhathija and others Vs. The Collector, Thane, Maharashtra and others*, , it is observed that:-

"We may only observe that the Government is expected to act and must act in a way which would make it consistent with the good administration. It is they, and no one else - who must pass judgment on this matter. We must, therefore, leave it to the Government.""

Reformation, rather than recourse to proceeding, can kill the evil but that is not the factor for legislation. Cardinal Gibbons in his address in 1909 sermoned that:-

"Reform must come from within, not without you cannot legislate for virtue."

Proliferation of Public Interest Litigation (PIL) may be tolerable and be held appropriate only up to a point. Sydney Harries' statement is apposite :-

"Once we assuage our conscience by calling something a "necessary evil", it begins to took more and more necessary and less and less - evil."

Rights guaranteed by the Constitution (known as fundamental or constitutional rights) and indicated by other enactments (known as legal rights) should suffer no infringement but it has to be borne in mind that right of one is tidily the duty of another. The Courts have operated on the principle that those who have less in life should have more in law. This is why PIL had not been held to be an unwelcome feature. In *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, , it is held that:-

"It was only in the year 1981 in the *S.P. Gupta Vs. President of India and Others*, that this court for the first time took the view that where a person or class of persons to whom legal injury is caused by reason of violation of a fundamental right is unable to approach the Court for judicial redress on account of poverty or disability or socially or economically disadvantaged position, any member of the public acting bona fide can move the Court for relief under Article 32 and a

fortiorari, also under Article 226, so that the fundamental rights may become meaningful not only for the rich and the well-to-do who have the means to approach the Court but also for the large masses of people who are living a life of want and destitution and who are by reason of lack of awareness, assertiveness and resources unable to seek judicial redress."

It is thus luculent that PIL has to take care of those who are "living a life of want and destitution" and are hapless and helpless. It can also cover the question of public injury of great magnitude having potential to create chaos or to topsy-turvy the system. But beyond this, answer in such litigation should be monosyllabic "no" under extraordinary jurisdiction conferred by Article 226.

The celebrated dictum is "ubi jus, ibi remedium". Ordinarily there has to be course under ordinary law and the recourse to extraordinary provision like Article 226 should be an exception. In case of a public nuisance or other wrongful act affecting or likely to affect the public, a suit for declaration and injunction or for such other relief as may be appropriate in the circumstances of the case, may be instituted by two or more persons with the leave of the Court to combat public nuisance in an effort to incinerate public injury and to idolize public interest in terms of section 91 of the CPC or section 133 of the Code of Criminal Procedure if so warranted by facts.

Side by side, it has to be appreciated that if there is a perversion, Courts cannot be expected to whistle on it every time Governments functioning under the Constitution and officers charged with the obligations, supposed to be public servants, and not public masters, should address themselves to avoid public injury and accredit public interest.

So considered, the Court, in our view, while considering the cause laid via a PIL, has to keep in focus at least the under noted features :-

(a) Extraordinary discretionary power is conferred by Article 226 to kill evil, when visible, in appropriate and exceptional cases only.

(b) Scope is further shrunk to expression like "for any other purpose" so far as an issue in regard to right to property is concerned because it is no longer a fundamental right [Omitted from Article 19 by the Constitution (Forty-fourth) Amendment Act, 1978, with effect from 20-6-1979].

(c) The Courts under the umbrella of Article 226 are not expected or required to correct all executive errors or remove all legislative omissions and have to preserve and protect delicate balance indicated by Constitutional system among its three basic institutions.

(d) PIL should disclose and manifest public injury to class of persons who suffer some kind of disability to seek judicial redress or demonstrate public injury of enormity or indicate case of pressing need to actuate some body or authority required to serve cause of the public so as to fall in the category of rarest of rare cases.

(e) Dependency on PIL should not result in unwarranted pendency of private litigation.

(f) PIL, by its very nature and purpose, should be rare, not a regular feature and sedulity of a vigilant citizen should be directed to the appropriate Government or authority or should result in recourse under ordinary law, if issue is fit enough for such an exercise.

After stating the illustrative periphery, we have considered the subject-matter and reliefs as claimed in these petitions with due focus on the aforesaid features. We find that these petitions do not fall under the feature (d) above or any other feature as chronicled by us.

The petitions are thus demonstrably not in the class of "rarest of rare cases". Powers under Article 226 are required to be exercised, more so in petitions captioned and categorised as Public Interest Litigation, sparingly. The respondents have questioned the "locus standi" and nature of reliefs in such petitions. In our view, their objection is well merited and is accordingly permitted to prevail.

Ex consequenti, we hold that these petitions merit to be mortalised at infant stage but without impairment of liberty of the petitioners to resort, if so advised, to other remedy like approaching appropriate Government/Authority etc.

These petitions are thus dismissed summarily with no orders as to costs.

Retain this order in Writ Petition No. 1269 of 1995 and place its copy each in the other connected Writ Petitions as particularised above.