(2014) 08 KAR CK 0020

In the Karnataka High Court

Case No : Writ Petition No. 33756 of 2011 (GM-RES-PIL)

K. Subramanyam Sastry APPELLANT

Vs

The Union of India RESPONDENT

Date of Decision : 05-08-2014

Acts Referred:

Constitution of India, 1950 — Article 136
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 292(a), 294, 416, 419, 448
Right to Information Act, 2005 — Section 10(4)(A)

Citation : (2014) 4 AKR 209 : (2014) ILR 4566 : (2015) 1 KarLJ 518

Hon'ble Judges : D.H. Waghela, C.J;Ashok B. Hinchigeri, J

Bench : Division Bench

Advocate : K.S. Periya Swamy and Socio Legal Clinic, Advocate for the Appellant; Aniyan Joseph, C.H. Jadhav, Sr. Adv., P. Prasanna Kumar, S.S. Naganand, Sr. Adv., Just Law Advs., D.L.N. Rao, Sr. Adv., Sandesh J. Chouta, P.B. Raju, D. Prabhakar, S. Nagaraju, T.M. Vekata Reddy, M.M. Swamy and R. Devdas, Prl. G.A, Advocate for the Respondent

Judgement

D.H. Waghela, C.J.—This petition is filed as a public interest litigation with a prayer to direct respondent No. 2 to probe into the illegally exported iron-ore in collusion with mining mafia to the tune of Rs. 118 crores by one Mr. V.R.S. Natarajan, CMD of M/s. BEML Limited, Bangalore and others, in the financial year 2007-2008, through M/s. BEML Limited, Bangalore, without any authority under law and valid legal papers. It is further stated in the petition itself that the petitioner is a shareholder of M/s. BEML Limited, incorporated under the Companies Act, 1956 and the Hon''ble President of India holding more than 54% of equity shares of that Company is stated to be a shareholder investing public money. The petition is stated to have been filed without having any type of personal interest. Originally, the petitioner has joined as respondents, Union of India and the Central Bureau of Investigation-Anti Corruption Branch, with the prayer to direct respondent No. 2 to register a regular case/FIR against the offenders, including Board of Directors and shareholders of M/s. Champion

Textiles Limited, Bangalore and also to direct respondent No. 2 to periodically report the action taken. During the pendency of the petition, the petitioner has joined and furnished the details of respondent Nos. 1 to 34. Respondent Nos. 3, 5, 6, 7, 8 and 26 have submitted their statement of objections with the preliminary submission to the effect that the petition is liable to be dismissed in limine and that it is not maintainable against any of the respondents. The other objections as far as they are relevant for the present purpose are as under:--

"3. The Petitioner had previously filed a writ petition in WP No. 9386/2011, based on certain observations in the very same report of the CAG regarding the Respondents recognising certain sales in alleged contravention of the accounting standards, praying, inter alia, for a direction to the Central Bureau of Investigation (CBI) to reverse the inflated sales and to expedite the investigation to expose offenders like Shri. V.R.S Natarajan, Chairman and Managing Director and other senior functionaries of Respondent No. 3, to face the consequences of their actions. The said writ petition was disposed of with observation that it was not possible for the Court to entertain prayers in the nature made by the Petitioner in the writ petition vide its order dated 16.03.2011. A copy of the order is produced as ANNEXURE-R1.

4. The Petitioner, thereafter, preferred Criminal Petition 1917/2011 under Section 482 of the Cr. PC praying for a similar relief. The said criminal petition was dismissed by the learned Single Judge of this Hon''ble Court vide order dated 06.02.2012. The Petitioner is expected to approach the Hon''ble Court with clean hands. Copy of the order is produced as ANNEXURE-R2.

5. The Advocate for the Petitioner is a dismissed employee of the Respondent No. 3 for major misconducts. The said Advocate was first terminated from the services of the Respondent No. 3 on 7.11.1979 along with four others. In terms of the settlement arrived at between the Management and the employees Union, the Advocate for the Petitioner and others were taken into the services of the Respondent No. 3 Company afresh. Thereafter, the Advocate for the Petitioner continued with his illegal and anti Company activities and was again dismissed on 6th Sept. 2006 for proven acts of misconducts. A copy of the order of termination is annexed herewith and marked as Annexure R-3. The Advocate for the Petitioner challenged the said order of dismissal by filing Application under Sec. 10(4)(A) before the Hon''ble 1st Additional Labour Court at Bangalore in ID No. 525/2006 and the said Application was heard and the Hon''ble Court held the enquiry conducted by the 3rd Respondent fair and proper. A copy of the order of the Hon''ble Presiding Officer, I Addl. Labour Court, Bangalore, is annexed herewith and marked as Annexure R-4.

6. The Advocate for the Petitioner is in the habit of approaching various forums, including this Hon''ble Court by filing frivolous and vexatious applications on one pretext or the other so as to see to it that the productive time of the Executives of the 3rd Respondent Company is spent unproductively and with an ulterior motive to damage the reputation of the 3rd Respondent. Three criminal cases

against Shri. K.S. Periyaswamy, the Advocate for the Petitioner, viz., CC Nos. 13779/06, 24686/06 and 39080/2010 are pending before the IX Addl. Chief Metropolitan Magistrate, Bangalore, for offences punishable under Sections 292(a), 294, 416, 419, 448, 503, 504, 506, 507 and 509 of Indian Penal Code, where trials are in progress. Copies of the documents relevant to the above stated cases are annexed as Annexure R-5 (colly).

7. The above Criminal Cases against Shri. Periyaswamy, the Advocate for the Petitioner herein, relate to making threatening calls to 4th Respondent, misbehaving with the security personnel posted at the premises of the 3rd Respondent, including the lady Security Guard among the staff working there, and for having sent obscene messages to the vigilance portal of the 3rd Respondent against the then lady Chief Vigilance Officer, who was on deputation from the Indian Railways. Apart from the above, recently, a First Information Report (no.73/2011 dated 26.03.2011) was registered against Shri. Periyaswamy for giving false information to the police that the 3rd Respondent was burning the records/documents pertaining to a case pending before this Hon''ble Court. Shri. Periyaswamy also regularly files applications under the Right to Information (RTI) Act, 2005 seeking information concerning the Respondent BEML from various authorities and its customers. He has so far filed 119 Applications and also many numbers of Appeals under the RTI Act, 2005 with the 3rd Respondent alone. The reasons for Shri. Periyaswamy''s animosity towards the officials of 3rd Respondent are apparent.

8. The Advocate for the Petitioner, in his personal capacity, has made allegations very similar to those in the instant writ petition in a letter dated 25.12.2011 to the Additional Director-General of Police, Crime Investigating Department, Hyderabad. In the said letter, Shri Periyaswamy complained of inaction by the State authorities into alleged complaints against the Answering Respondents. A copy of this letter was marked to Hon''ble President of India, the Prime Minister, the Chief Minister of Andhra Pradesh and the Union Defence Minister. In view of the similarity in the allegations, it appears that Shri Periyaswamy is also using the Petitioner for oblique motives to ventilate his own grievances against the Respondent BEML and its management. A copy of the letter dated 25.12.2011 is annexed here with and marked as Annexure R-6.

9. While in service the Advocate for the Petitioner was found associating with and passing vital information to the Petitioner''s in WP No. 19511/2005(PIL) filed against the 3rd Respondent and others. Even the Advocate for the Petitioner had filed Misc. WP No. 3236/2010 in WP No. 19511/2005 (PIL) for impleadment on the ground that he had written to the Joint Secretary, Ministry of Defence, New Delhi demanding a detailed probe into the supply order placed by the 3rd Respondent with M/s. Tatra Sipox (UK) Limited and that no action was taken. The said writ petition was disposed of by this Hon''ble Court, vide order dated 24.01.2011, taking into account a memo filed on behalf of the 3rd Respondent that it adopts a prescribed comprehensive procedure to procure goods in a

transparent manner and that it also follows the guidelines of the Central Vigilance Commission issued from time to time. The Misc. Writ Petition filed by the Advocate for the Petitioner herein was dismissed by this Hon''ble Court. A copy of the order dated 24.01.2011 passed by the Hon''ble High Court in WP No. 19511/2005 is annexed herewith and marked as Annexure R-7.

10. However, the issue of Tatra Sipox has again been raised by the Petitioner herein in the instant writ petition without disclosing the order passed by this Hon''ble Court in the above said writ petition. Further, the Advocate for Petitioner filed a Private Complaint against the 4th Respondent herein who is the Chairman & Managing Director of 3rd Respondent for the offences alleged to have committed under Sections 499 & 500 of I.P.C. during the reply given to the questions asked by the Advocate for the Petitioner in the 46th Annual General Body meeting of the 3rd Respondent. The Advocate for the Petitioner, despite knowing that the offence alleged is a Bailable offence, has filed a frivolous petition objecting to the same and making false and wild allegations against the 4th Respondent herein, which clearly proves the personal vendetta of the Advocate for the petitioner against the 3rd and 4th Respondents. Copy of the said objection is annexed herewith and marked as Annexure R-8. In this regard, it is submitted that the Advocate for the Petitioner has distributed copy of a letter said to have been sent to the Hon''ble President of India and Prime Minister, again making false allegations against the 4th Respondent. A copy of the same is annexed herewith and marked as Annexure R-9."

2. The above statement of objections is verified by an affidavit dated 22.05.2012 and thereafter no rejoinder is filed on the record. In view of the undisputed facts about the litigations initiated by the petitioner against the same Company on different occasions and for different reliefs, it can be safely concluded that the petition is inspired by personal motive of the petitioner and he has already filed a number of litigations, some of which have been proven to be frivolous and vexatious. Upon a specific query with regard to the credentials and record of social service of the petitioner, it is fairly conceded by learned counsel for the petitioner that the petitioner does not have any other record of taking up any cause by way of public interest litigation.

3. On the other hand, learned senior advocate appearing for the respondents submitted that the petitioner has not only repeatedly made baseless allegations, but also put the respondents to avoidable expenses by unnecessarily joining them as respondents. He further submitted that, in view of the observations made by the Apex Court in a number of recent judgments, the petition is required to be dismissed with appropriate strictures and an order of punitive cost. Learned senior counsel relied upon Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others, to point out that;

"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 clean heart, clean mind and clean objective. The court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well as to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs."

T.N. Godavarman Thirumulpad Vs. Union of India (UOI) and Others, was relied upon for the proposition 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, in fact, is not a public interest litigant and whose bona fides and credentials are in doubt."

State of Uttaranchal Vs. Balwant Singh Chaufal and Others, was relied upon for the observations made as under:

"174. A degree of precision and purity in presentation is a sine qua non for a petition filed by a member of the Bar under the label of public interest litigation. It is expected from a member of the Bar to at least carry out the basic research whether the point raised by him is res integra or not. The lawyer who files such a petition cannot plead ignorance.

175. We would like to make it clear that we are not saying that the petitioner cannot ask the court to review its own judgment because of flaws and lacunae, but that should have been a bona fide presentation with listing of all relevant cases in a chronological order and that a brief description of what judicial opinion has been and cogent and clear request why there should be reconsideration of the existing law. Unfortunately, the petitioner has not done this exercise. The petition which has been filed in the High Court is a clear abuse of the process of law and we have no doubt that the petition has been filed for extraneous considerations. The petition also has the potentiality of demeaning a very important constitutional office. Such petition deserves to be discarded and discouraged so that no one in future would attempt to file a similar petition."

It is further contained in the clear directions in paragraph 181 as under:

"181. (1) to (6)..............................

(7) The Courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

(8) The Courts should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the

petitions filed for extraneous considerations."

It is further observed by the Apex Court in P.R. Narahari Rao Vs. State of Kerala and Others, that:

"......The very fact that the Division Bench of the High Court devoted time to record an order running into 56 typed sheets and also the fact that this Court has devoted many hours including two hours hearing of today indicates how a purely civil and private litigation, camouflaged as a public interest litigation, puts unnecessary burden on the courts and results in wastage of time which could otherwise be devoted for those who are waiting for years together with the hope that some day they will get an opportunity of hearing. This case is also illustrative of how a litigant pursues two remedies simultaneously and takes chance of getting favourable result from one or the other judicial forum."

Lastly, the observations as under made by the Apex Court in Kishore Samrite Vs. State of U.P. and Others, were relied upon for the respondents:

"32. The cases of abuse of process of court and such allied matters have been arising before the courts consistently. This Court has had many occasions where it dealt with the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the court for redressal of any grievance and the consequences of abuse of process of court. We may recapitulate and state some of the principles. It is difficult to state such principles exhaustively and with such accuracy that would uniformly apply to a variety of cases. These are:

....

32.3. The obligation to approach the court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.

....

32.5. A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.

32.6. The court must ensure that its process is not abused and in order to prevent abuse of process of court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the court would be duty-bound to impose heavy costs.

....

36. The party not approaching me court with clean hands would be liable to be non-suited and such party, who has also succeeded in polluting the stream of justice by making patently false statements, cannot claim relief, especially under Article 136 of the Constitution. While approaching the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based

on some information, the source of such information must also be disclosed. Totally misconceived petition amounts to an abuse of process of court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to an abuse of process of court.................."

4. Examining the pleadings in the present case in light of the above judicial dicta, it would clearly appear that the petitioner has a particular agenda of his own of initiating one after the other litigation against the respondents herein, even after disposal of the earlier petition being Writ Petition No. 9386/2011 based on certain observations in the very same report of CAG regarding the respondents and praying inter alia for a direction to the CBI to reverse the inflated sales and to expedite the investigation to expose offenders. The petitioner has approached this Court once again on the same facts and for practically the same reliefs. It is not denied that the advocate for the petitioner is a dismissed employee of respondent No. 3 and hence, the litigation can be inferred to have been pursued purely out of personal motives. Under the circumstances, the petition is required to be dismissed, without entering into any other issue sought to be raised in the petition and only on the ground of lack of bona fides and locus standi of the petitioner.

5. As regards the imposition of punitive cost, as insisted upon by the respondents, it was submitted by learned counsel for the petitioner that the issue was taken up in public interest by the petitioner and his counsel, without any mala fide intention and he requested on that basis that cost may not be imposed. Having regard to the submissions of learned counsel on either side, the petition is dismissed imposing a token amount of cost of Rs. 5,000/-, which shall be paid by the petitioner to respondent No. 3 within a period of one month.

