(1999) 07 CAL CK 0045

In the Calcutta High Court

Case No : Writ Petition No. 17500 (W) of 1997

Milan Kumar Pradhan and Another APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 27-07-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 2000 Cal 5

Hon'ble Judges : S.B. Sinha, Acting C.J.;M.H.S. Ansari, J

Bench : Division Bench

Advocate : P.K. Mallick, D.K. Samanta, Nimai Chand Samanta, Samapti Chatterjee and Sumita Dutta, for the Appellant; Anindya Mitra, M.M. Roy, A.K. Das, R.M. Chatterjee, Monika Chatterjee, S.L. Hazra, Ranjan Roy and A.N. Singh, for the Respondent

Final Decision : Dismissed

Judgement

1. Both the writ applications involving same questions of fact and law were taken up for hearing together and are being disposed of by this common judgment.

2. These two writ applications by way of Public Interest Litigation arise out of the alleged acts of omission and commission on the part of the authorities of Burn Standard Ltd., a Public Sector Undertaking, in relation to (i) E. E. Platform Construction; (ii) Contract in relation to Essar Oil, and (iii) Disposal of sheet piles.

3. So far as the Construction of E. E. Platform is concerned, the case of the petitioners appears to be that a sub-contract has been granted to a person who was not the lowest offerer. It is alleged that the order of entire work of both Duke Offshore and Dolphin Offshore had been given separately as a result whereof the company has incurred a loss of Rs. 1.05 crores. It is further alleged that the company had granted advance to the contractor by way of working capital contrary to the terms of contract.

4. As regard Essar Oil the only grievance is that liquidated damages amounting

to Rs. 3.30 crores had not been levied.

5. The grievance of the petitioners appears to be that the bank guarantee furnished by the contractor had not been enforced.

6. So far as the sale of sheet piles are concerned it is stated that huge imports had been made for the purpose of construction of E. E. Platform at Jellingham in the District of Midnapore i.e. item No. 1 referred to hereinbefore and a sale of such piles are being made by removing and/or winding up of the said offshore project and thereby denying job opportunities to the youth of the State.

7. Before proceeding to deal with the aforementioned contentions raised on behalf of the writ petitioners, we may note a disturbing feature in this case. One Shri A.N. Singh who had been added as respondent No. 8 in Writ Petition No. 30331 (W) of 1997, was the General Manager of the said project. He had been transferred. He filed a writ petition in this Court which was dismissed. Thereafter the first writ application was filed by Milan Kumar Pradhan (W.P. No. 17500 (W) of 1997). In the said case an interim order of status quo was passed as regard Annexure ''D'' to the said writ application which was later on vacated. Thereafter the second writ application was filed by Jiten Kumar Das (W.P. No. 30331 (W) of 1997) on the self-same cause of action. Against the order vacating interim injunction in W.P. No. 17500 (W) of 1997, an appeal had been filed. In the said appeal the aforementioned respondent No. 8 filed an application for impleading himself as a party. The said application has been refused. However, a similar application has been allowed in W.P. No. 30331 (W)/97. Both the writ petitions thereafter came up for hearing before a Division Bench. The Division Bench presided over by the then Acting Chief Justice, heard the matter in part on 3-11-1998 but it appears that no judgment had been delivered. In the aforementioned situation, these writ applications had been placed before us for hearing.

8. The defence of defendants appear to be that these writ applications are the handwork of the aforementioned A. N. Singh as he did not obtain any relief in this writ application questioning the order of transfer passed as against him. It is not necessary for us to go into the aforementioned question as it appears from the affidavit-in-opposition filed by the respondents herein that a sub-contract had to be granted as the workmen had refused to go to Bombay unless the employer grants them overtime for their entire stay i.e. as if they are working 24-hours a day at Bombay.

9. It has been stated that by grant of such sub-contract, the company had earned a profit about Rs. 70 lakhs. However, it appears that as regards enforcement of Bank-Guarantee, an appeal against an order passed by a learned single Judge is pending in this Court.

10. As regard Essar Oil, we are satisfied that a policy-decision adopted by the Company in providing work-capital to the contractor cannot be said to be arbitrary so as to attract the wrath of Article 14 of the Constitution of India.

11. As regards case of the petitioners in respect of selling of sheet pile is concerned M/s. McDermott International Inc. who is the reputed company, a huge quantity of sheet piles had been imported but after construction of EE Platform some quantity of sheet piles became surplus. A Parliamentary Committee was appointed for the purpose of inquiring into the matter and the Central Government had directed that such sheet piles be sold. A global tender had been invited and an American Firm intended to purchase the same at a much higher price but in the meantime the order of injunction had been passed by this Court, as a result whereof the highest tenderer had backed out. It is further stated that the company had also obtained permission to sell the same by the Designated Authority viz. the Development Commissioner, Falta Export Processing Zone, Ministry of Commerce, Govt. of India. According to the respondents, had such an order of injunction been not passed at the instance of the petitioners, they would have received a much higher amount by selling of the said sheets. An action is also sought to be taken against the consultant.

12. So far as the alleged mismanagement of the company is concerned, the Apex Court in Sri Ramdas Motor Transport Ltd. and Others Vs. Tadi Adhinarayana Reddy and Others, had upheld the judgment of one of us (M.H.S. Ansari, J.) which was set aside in appeal by the Division Bench stating :--

"The learned single Judge before whom the present writ petition came up for hearing very rightly held that the Companies Act provides a forum to consider the grievances made out by the first respondent in the writ petition. When such a forum, statutorily constituted, existent is but appropriate that resort to Article 226 should be discouraged. There is an efficacious alternative remedy available under the statute. In fact under the Companies Act, a more satisfactory solution is available. The single Judge was right in pointing out that some of the shareholders have initiated proceedings before the Company Law Board. The only grievance of the petitioner in the writ petition is that no orders have been passed thereon. The single Judge has rightly held that such a grievance cannot constitute a ground for invoking the jurisdiction of the High Court under Article 226. He, therefore, dismissed the writ petition.

In appeal, however, the Division Bench of the Andhra Pradesh High Court presided over by the Chief Justice, entertained the appeal on the ground that the petition raised many serious issues as to falsification of the accounts of a public limited company. It said that the acts of the company would jeopardize public interest. Therefore, the petition involved wider "public interest" and should be entertained. In the result the Division Bench issued a direction to the Central Government to make its own verification of the allegations in the writ petition. In other words, the Division Bench of the High Court directed an investigation into the affairs of the company by passing the detailed provisions with in-built safeguards under the Companies Act, designed specially for this purpose. The only ground for intervention appears to be "public interest". We fail to see what public interest is involved in disputes of the kind referred to in the writ petition.

They basically deal with mismanagement of the affairs of the company and oppression of the minority shareholders. The company is only a deemed public limited company. Its shareholding is very closely held. The only other factor referred to in the writ petition to invoke the doctrine of so-called public interest, is the fact that the company had borrowed moneys from public institutions. This is no ground for not availing of the statutory remedies provided under the Companies Act before the appropriate statutory forums which are designed for this very purpose. We are distressed to find that the well-reasoned judgment of the single Judge was interfered with in a casual manner. The impugned judgment rests on fragile foundations and reads more like an ipse dixit."

13. Public Interest Litigation, as is well known, should not be allowed to act as vehicle of harassment. It being pro bono publico should not smack of any ulterior motive ''as no person can be permitted to achieve any personal gain or ulterior purposes thereby.

14. In Janata Dal Vs. H.S. Chowdhary and Others, , it was held :--

"It is, thus, clear that only a person acting bona fide and having sufficient interest in the proceeding of P1L will alone have a locus standi and can approach the Court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly a vexatious petition under the colour of PIL brought the Court for, vindicating any personal grievance, deserves rejection at the threshold."

15. It is further well known that the Public Interest Litigation should pass the following tests :--

(1) Enforcement of Fundamental Rights of those who genuinely do not have adequate measures of access to Judicial system or denied benefit of the solutions provisions incorporating the directive principle of State Policy for amelioration of their condition, and

(2) Preventing or annulling acts and omissions violative of constitution of law resulting in substantial injury to Public Interest.

Some of the principles which should also be borne in mind by the Court are :--

(1) The Court must be careful that the members of the public who approaches the Court are acting bona fide and not in personal garb of private profit or political motivation or other oblique considerations. The Court must not allow its process to be abused.

(2) The Court should not take cognizance in such matters merely because of its attractive name. The petitioner must inspire the confidence of the Court and must be above suspicion.

16. The High Court while entertaining a Public Interest Litigation must indicate how the public interest is involved in the case viz.;

(1) It was for the aggrieved person to assail the illegality of the offending action and no third party has a locus standi to canvass the legality or correctness of the action. A case should not be entertained unless the petitioner points out that his legal rights have been infringed.

(2) If a person wants a relief in a Court independent of a statutory remedy, he must show that he is injured or subjected to or threatened with a legal wrong. The Courts can interfere only where legal rights are involved. In fact legal wrong requires judicially enforceable right and the touchstone to judiciability in injury to a legally protected right.

17. We may also indicate that in a recent decision in Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others, , the Apex Court has cautioned the High Courts in granting Interim matter in relation to grant of contract stating :--

"Therefore, in granting an injunction of Stay Order against the award of a contract by the Government or a Government agency, the Court has to satisfy itself that the public interest in holding up the project far outweighs the public interest in carrying it out within a reasonable time. The Court must also take into account the cost involved in staying the project and whether the public would stand to benefit by incurring such cost."

18. It is one of such cases while granting of an injunction by this Court has resulted in enormous monetary loss to the respondent herein. We are satisfied that these are not the fit cases where the Court should entertain writ petition in the nature of Public Interest Litigation.

19. These applications are, therefore, dismissed with costs. Counsel''s for assessed at 300 Gms.

