

(2010) 03 AHC CK 0074
In the Allahabad High Court

Naresh Kumar Mishra and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-03-2010

Acts Referred:

Constitution of India, 1950 — Article 21
Right to Information Act, 2005 — Section 6

Citation : (2010) 03 AHC CK 0074

Hon'ble Judges : Anil Kumar, J; Amitava Lala, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Amitava Lala, A.C.J.

1. This public interest litigation has been instituted by three Advocates of this Court with the supporting affidavit that whatever statements they have made by way of this writ petition are true to their personal knowledge. However, on enquiry, we have come to know that they have taken informations from others but they have no personal knowledge with regard to such informations. However, at the initial stage, learned Counsel appearing in support of the petitioners has contended before us that the petitioners have made an application u/s 6 of the Right to Information Act, 2005 seeking certain informations and in the absence thereof, they will not be in a position to establish their case, therefore, as and when such informations will be received, the same will be filed by way of supplementary affidavit. Presently, they have no source of information other than the source of newspaper cuttings and electronic media. He has further frankly confessed, out of his fairness, that railway administration has not been made party in the writ petition. However, learned Counsel has contended before us that the issue is sensational one and the entire country has observed the nature of rally and the expenses incurred on the President of the Ruling Party and the present Chief Minister. We have been told that so far as the rally part is concerned, a writ petition is pending, however, emphasis has been given in

regard to misuse of public money in that form. Learned Counsel wanted to explain the question in regard to the manner the rally was organised. In any event, it appears to us that the core issue is with regard to mis-utilization of public money in the rally. On enquiry, we have come to know that the rally was conducted on a declared holiday. He has cited a Supreme Court judgment before us reported in State of Madhya Pradesh Vs. Shambhu Dayal Nagar, to establish that direction for investigation with regard to acquisition of assets disproportionate to known source of income by the respondents, Chief Minister and family members and for appropriate action to prosecute the respondents under the provisions of Prevention of Corruption Act, 1988 cannot be issued straightaway without any investigation by an independent agency like Central Bureau of Investigation.

2. According to us, in that case prima facie case of disproportionate assets was established. In that judgment, we also find a very important paragraph relating to maintainability of the public interest litigation, i.e. paragraph 39, which is quoted below:

39. The test which one has to apply to decide the maintainability of the PIL concerns sufficiency of the petitioner's interest. In our view, it is wrong in law for the Court to judge the petitioner's interest without looking into the subject matter of his complaint and if the petitioner shows failure of public duty, the Court would be in error in dismissing the PIL.

3. Therefore, failure of public duty will be tested on the materials. Here the case is misuse of public fund. Even if it is similarly placed, some materials are required to establish the case. Petitioners' own case is that they are yet to get materials under Right to Information Act and necessary application is made. Therefore, both the cases are not similarly placed.

4. Learned Counsel appearing for the petitioners, thereafter, has drawn our attention to the annexures of the writ petition, being several paper cuttings, in the absence of appropriate information under the provisions of the Right to Information Act, 2005, for which the petitioners have made an application u/s 6 of the said Act. It has been further contended that the issue of wearing costly garland to the respondent No. 16 i.e. National President of the political party and the Chief Minister has been raised in the Parliament. Whether it has been raised either in the Parliament or in the Legislative Assembly, if the members claim themselves to be democratic, they have to make deliberation on the issue to fix a parameter. It is necessary to make deliberation whether they will maintain their democratic status or bring back feudal status. We hope and trust that even if no public money is misused, yet democratic leaders should behave like roll model which is important for the society otherwise image will be automatically tarnished. Therefore, we further hope and trust that there should be utmost caution so that there may not be any such repetition. However, when the petitioners frankly confessed that they have yet to get materials under the Right to Information Act and Court observed that let this writ petition be dismissed

with liberty to make afresh after getting informations, yet learned Counsel appearing for the petitioners insisted for hearing without materials, the Court has no other alternative but to hear the parties to record reasons.

5. As against the reliance on newspaper reports, the learned Advocate General appearing for the State has relied upon three judgments, though all of them are not related to public interest litigation, including the Division Bench judgment of this Court reported in 1998 All. L.J. 204 , Amal Kumar Chatterjee v. State of U.P. and Ors., wherein the Court after considering the applicability of evidential value of newspaper reports, held that newspaper report being in the nature of hearsay evidence cannot be relied on in the absence of any other reliable document. He further relied upon a judgment of the Supreme Court reported in (1993) 3 SCC 151 S.A. Khan v. CH. Bhajan Lal and Anr. wherein the Supreme Court has held that the newspaper report being only a hearsay evidence cannot be relied on for initiating the contempt proceedings. The said judgment was delivered in a case pertaining to Contempt of Courts Act based on the fact that the minister in his counter affidavit had taken a stand that the statements attributed to him based on newspaper report are mere hearsay and cannot, in law, be relied upon for the purpose of initiating such proceedings. Such judgment was also followed in an unreported judgment in a public interest litigation being Writ Petition No. 6544 (M/B) of 2002, Major S.N. Tripathi (Retd.) and Anr. v. State of Uttar Pradesh, where also the Division Bench of this Court dismissed the public interest litigation on the same point.

6. Thereafter, the learned Advocate General made certain statements by saying that arrangements of transportation, use of the ground, electricity and illumination are made by the political party and no public fund is used for the same. So far as the role of the government is concerned, it is only restricted to maintain law and order, arrange ambulances and civic amenities. So far as the use of ground and electricity are concerned, payments have already been made. So far as the illumination is concerned, it was done by using generators etc. Then, he relied upon a three Judges' decision of the Hon'ble Supreme Court reported in Common Cause, A Registered Society Vs. Union of India and Others, of such judgment, which is very relevant, is quoted herein below:

174. The other direction, namely, the direction to CBI to investigate "any other offence" is wholly erroneous and cannot be sustained. Obviously, direction for investigation can be given only if an offence is, prima facie, found to have been committed or a person's involvement is prima facie established, but a direction to CBI to investigate whether any person has committed an offence or not cannot be legally given. Such a direction would be contrary to the concept and philosophy of "LIFE" and "LIBERTY" guaranteed to a person under Article 21 of the Constitution. This direction is in complete negation of various decisions of this Court in which the concept of "LIFE" has been explained in a manner which has infused "LIFE" into the letters of Article 21.

7. So far as the other point, i.e. maintainability of the writ petition is concerned,

the learned Advocate General has first relied upon a judgment of the Supreme Court reported in Ashok Kumar Pandey Vs. The State of West Bengal and Others, of such judgment is quoted herein below:

14. The court has to be satisfied about: (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; and (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests: (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature. The court has to act ruthlessly while dealing with imposters and busybodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect.

8. A Similar view has been taken by the Supreme Court in a case reported in Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others, of such judgment are quoted herein below:

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 armoury of law for delivering social justice to 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 be publicity-oriented or founded on personal vendetta. As indicated above, court must be careful to see that a body of persons or member of the public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique considerations. 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.

... ..

16. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to

note that courts are flooded with a large number of so-called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilised for disposal of genuine cases. Though in *Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra* this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Apart from the sinister manner, if any, of getting such copies, the real brain or force behind such cases would get exposed to find out the truth and motive behind the petition. Whenever such frivolous pleas, as noted, are taken to explain possession, the court should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforesaid so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts.

9. Ultimately, the Supreme Court became so conscious about the mis- utilisation of such types of disputes in the form of public interest litigation and has issued guidelines for the High Courts to make rules to entertain public interest litigations. Paragraph 98 of the judgment of the Supreme Court reported in AIR 2010 SC 1029, *State of Uttaranchal v. Balwant Singh Chaufal and Ors.*, in which such directions have been given, is quoted below:

198. In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:

(1) The courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual Judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the Rules prepared by the High Court is sent to the Secretary General of this Court immediately thereafter.

(3) The courts should prima facie verify the credentials of the petitioner before

entertaining a P.I.L.

(4) The court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The court should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The court should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(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 court 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.

10. Against this background, we are coming back to the controversy involved in the present case. We are of the view that since the failure of public duty is not there, but utilization of fund either by the government or by the political party is involved, therefore, one thing can be required to be understood by the petitioners whether the public money has been utilised for such rally or the fund was arranged from other sources. We are of the view that on the basis of the information given by the learned Advocate General to this Court, at the best, the petitioners will be entitled to get the information u/s 6 of the Right to Information Act and after obtaining such information, if he/they feels/feel that cause of action arises, it is open for him/them to take such aspect of the matter before the writ Court either under personal capacity or in the form of a public interest litigation. Present petition in the form it has been proposed only by mere or bare statements and without particular information in connection thereto cannot be held to be maintainable. Therefore, the writ petition is dismissed, however, no order is passed as to costs. In any event, passing of this order will, in no way, affect the right of the petitioners to get information and if they feel aggrieved, to proceed in accordance with law.