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**(2014) 01 SHI CK 0007**  
**In the High Court Of Himachal Pradesh**  
**Case No : CWP No. 8966 of 2013-G**

Neeraj Chandel

APPELLANT

Vs

The State of H.P. and Others

RESPONDENT

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**Date of Decision :** 01-01-2014

**Acts Referred:**

**Citation :** (2014) 01 SHI CK 0007

**Hon'ble Judges :** Mansoor Ahmad Mir, Acting C.J.;Rajiv Sharma, J

**Bench :** Division Bench

**Advocate :** Arvind Moudgil and Ms. Kamlesh Shandil, for the Appellant; Shrawan Dogra, Advocate General and Mr. Anup Rattan, Romesh Verma and Mr. M.A. Khan, Additional Advocate Generals and Mr. Kush Sharma, D.A.G. for Respondents No. 1 to 5, Mr. Rakesh Dhaulta, Advocate, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Mansoor Ahmad Mir, Actg. C.J.

1. Petitioner has invoked the jurisdiction of this Court by the medium of this writ petition for quashing the tender notice No. HPSEDC/CC/STUDENTS/NETBOOK-LAPTOP/2K13, issued by the respondents for purchase of laptops/net books, which are to be supplied to the students, who are meritorious, on the grounds taken in the writ petition. The respondents have resisted the writ petition on various grounds taken in the memo of reply.

2. The question is-whether the petitioner has filed this petition genuinely/for the benefit of some other person/is motivated?

3. In order to answer the question supra, it is necessary to summarize the grounds on the basis of which the jurisdiction of this Court by way of Public Interest Litigation is sought:

3(a). That the respondents have issued tender notice in order to favour a particular company by making allotment order.

3(b). That various companies/firms had brought to the notice of the respondents the objections and differences but they have turned deaf ear and proceeded to conclude the tender process in favour of the said company.

3(c). That the laptops/net books, which are to be supplied, are sub-standard and are also having sub-standard specifications, which will adversely affect the health of students and particularly will tell upon their eye sight.

3(d). The petitioner has also tried to explain, how they are not beneficial, in a technical way.

4. The respondents, in their reply, have specifically stated that in the last year, 4000 laptops/net books of the same specification were purchased and supplied to the students, who are utilizing the same and none has made any complaint. It is apt to reproduce para 2 of the preliminary objections of the reply filed by the respondents herein:

2. That there is no public interest in filing the present writ petition as already submitted in para supra that the present writ petition appears to have been filed at the behest of some companies with ulterior motive to frustrate the welfares scheme for meritorious student of the State. It is pertinent to mention here that respondent State has already distributed 4000 net books of similar specifications with 10" display size last year to the meritorious students of class 10th, who have passed their board exams held in March, 2012 and there is no complaint of any kind, for the aforesaid net books, either from the students who were using them or any other person. It is further submitted that the specifications were finalized by a technical committee after having hands-on experience on various products (i.e. Touch Pads, Net books etc.) brought by prospective bidders. The respondent State has also now taken a conscious decision to give another 5000 net book/laptops of latest specifications this year to the meritorious students of class 10th & 12th who have passed Board examination held in March 2013. The challenging of the present procurement of 5000 net books/laptops by the petitioner in public interest smacks of some extraneous motive.

5. That the department has constituted an Expert Committee, which, after examining all the issues, has given its expert opinion, Annexure R-2. Thus, it cannot lie in the mouth of the petitioner to say that the laptops/net books are not technically sound.

6. It is also averred by the respondents in their reply that the petitioner has no locus to file the petition but is having some interests and that is why he has filed the writ petition.

7. Learned counsel for the petitioner was asked whether the association, of which the petitioner is Secretary, is recognized one and whether he is authorized to file a petition on behalf of the All India Students Federation State Unit, if any, existing in the State. He failed to reply such queries. He just stated that he has been engaged by the petitioner and is being paid by him.

8. While going through the averments contained in the writ petition, prima facie, it appears that this petition is at the behest of some person/company or is motivated.

9. It is apt to reproduce paras 8 and 12 of the writ petition herein:

8. That to the knowledge of the petitioner the respondents have however not considered the various deficiencies brought to their notice by various companies/firms and on the contrary they are proceeding further in pursuance to the tender notice by finalizing the tender in favour of a particular company of their choice.

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12. That the respondents are going to finalize the tender process and issuing work order to a particular company and in view of the urgency of the situation, sending of representation would not be fruitful.

10. It is not known how the petitioner came to know that various "companies"/"firms" had brought to the notice of the respondents various deficiencies, which, according to the petitioner, the laptops/net books are carrying. The petitioner has also not given the details of the said companies/firms, which is suggestive of the fact that the writ petition is not a Public Interest Litigation, but is motivated one and is filed under the guise of Public Interest Litigation.

11. The jurisdiction of the High Courts, by the medium of a Public Interest Litigation, can be invoked when it is in the interest of public, is not motivated one or is not on behalf of some other person or is not a paisa income litigation.

12. The Apex Court and the other Courts have dealt with these issues and have come down heavily. The present case is the one where this Court should come down heavily. The Apex Court has discussed the origin, background, evolution of Public Interest Litigation, the abuse of Public Interest Litigation and other aspects in a case titled as State of Uttaranchal Vs. Balwant Singh Chaufal and Others, and has laid down directions how to preserve the purity and sanctity of Public Interest Litigation. It is apt to reproduce para 198 of the said judgment herein:

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.

13. The Apex Court has not only discussed all the said aspects, but has also laid down how to discard and discourage frivolous and motivated petitions.

14. The Apex Court in a case titled as *Ayaaubkhan Noorkhan Pathan Vs. The State of Maharashtra and Others*, held that Public Interest Litigation must serve the basic human rights and in order to prevent misuse, the Court must ensure that genuine public interest is involved. It is profitable to reproduce para 12 of the said judgment hereinbelow:

12. This Court has consistently cautioned the courts against entertaining public interest litigation filed by unscrupulous persons, as such meddlers do not hesitate to abuse the process of the court. The right of effective access to justice, which has emerged with the new social rights regime, must be used to serve basic human rights, which purport to guarantee legal rights and, therefore, a workable remedy within the framework of the judicial system must be provided. Whenever any public interest is invoked, the court must examine the case to ensure that there is in fact, genuine public interest involved. The court must maintain strict vigilance to ensure that there is no abuse of the process of court and that, "ordinarily meddlesome bystanders are not granted a Visa". Many societal pollutants create new problems of non-redressed grievances, and the court should make an earnest endeavour to take up those cases, where the subjective purpose of the lis justifies the need for it. (Vide: P.S.R. Sadhanantham

Vs. Arunachalam and Another, Dalip Singh Vs. State of U.P. and Others, State of Uttaranchal Vs. Balwant Singh Chaufal and Others, and Amar Singh Vs. Union of India (UOI) and Others,

15. The Apex Court in a case titled Kushum Lata Vs. Union of India (UOI) and Others, held that the writ petitions, which are styled as public interest litigation, but involve private interest, should be thrown out. It is apt to reproduce para 21 of the judgment herein:

21. In the instant case, the appellant has styled the petition as PIL though it relates to a tender where she herself claims to be a tenderer. In another petition, questioning legality of the auction, she is a party. The High Court was perfectly justified in dismissing the writ petition styled as a PIL. We make it clear that Writ Petition No. 349/2003 which is stated to be pending shall be considered on its own perspective in accordance with law. We express no opinion on the merits of the said writ petition.

16. The writ petitioner, in the present case, has specifically averred in para 6 of the petition that the State should have issued the tender notice for supplying the laptops of other dimension and not of the dimension given in the tender notice.

17. The Apex Court in the case titled as Mrs. Asha Sharma Vs. Chandigarh Administration and Others, has held that a Public Interest Litigation cannot be filed on the ground that the Government should have made another decision instead of the decision already made which would have been more fair, scientific or logical. It is apt to reproduce para 10 herein:

10. The Government is entitled to make pragmatic adjustments and policy decisions, which may be necessary or called for under the prevalent peculiar circumstances. The Court may not strike down a policy-decision taken by the Government merely because it feels that another decision would have been more fair or wise, scientific or logical. The principle of reasonableness and non-arbitrariness in governmental action is the core of our constitutional scheme and structure. Its interpretation will always depend upon the facts and circumstances of a given case. Reference in this regard can also be made to Netaji Subhas Chandra Bose Vs. The State of West Bengal and Others,

18. Admittedly, the foundation of tender notice is in question and who has questioned the same under the garb of present Public Interest Litigation are those various companies or firms, who had raised some objections and who could not participate in the tender process. Thus, it involves a private interest and not a public interest.

19. Coming to the next ground that the laptops/net books are not technically sound, in our opinion, is a technical matter. The Courts cannot interfere in technical matters. The State/respondents have played their role and obtained expert opinion, Annexure R-3.

20. The Apex Court in the case of Aruna Rodrigues and Others Vs. Union of India

(UOI) and Others, held that the Courts cannot interfere in technical matters. It is apt to reproduce para 2 of the judgment herein:

2. This Court, vide its order dated 1st May, 2006, directed that till further orders, field trials of GMOs shall be conducted only with the approval of the Genetic Engineering Approval Committee (for short "GEAC"). I.A. No. 4 was filed, in which the prayer was for issuance of directions to stop all field trials for all genetically modified products anywhere and everywhere. The Court, however, declined to direct stoppage of field trials and instead, vide order dated 22nd September, 2009 directed the GEAC to withhold approvals till further directions are issued by this Court, after hearing all parties. Except permitting field trials in certain specific cases, the orders dated 1st May, 2006 and 22nd September, 2009 were not substantially modified by the Court. As of 2007, nearly 91 varieties of plants, i.e. GMOs, were being subjected to open field tests, though in terms of the orders of this Court, no further open field tests were permitted nor had the GEAC granted any such approval except with the authorization of this Court. This has given rise to serious controversies before this Court as to whether or not the field tests of GMOs should be banned, wholly or partially, in the entire country. It is obvious that such technical matters can hardly be the subject matter of judicial review. The Court has no expertise to determine such an issue, which, besides being a scientific question, would have very serious and far-reaching consequences.

21. The Apex Court in Balwant Singh Chaufal's case supra has also laid down that 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. In the said judgment, the Apex Court has taken note of the judgment in Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others, . It is apt to reproduce para 174 of Balwant Singh Chaufal's case supra herein:

174. In Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others, this court expressed its anguish on misuse of the forum of the court under the garb of public interest litigation and observed that the 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 the citizens. The court must not allow its process to be abused for oblique considerations.

22. While going through the averments made in paragraph 12 of the writ petition (supra), it is crystal clear that the petitioner apprehends that the allotment will be made in favour of a particular company, is suggestive of the fact that the petitioner is having some interest.

23. Thus, the Apex Court has rightly said that it is the duty of the Court to filter out the false and frivolous cases and ensure that the judiciary is not misused.

The present petition is one of that kind of cases.

24. The Apex Court in the case of *Holicow Pictures Pvt. Ltd. Vs. Prem Chandra Mishra and Others*, has held as under:

10. When there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, the said petition is to be thrown out. Before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding public interest aspect. Public Interest Litigation which has 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 regulated and abuse averted, it becomes also a tool in unscrupulous hands to release vendetta and wreck vengeance, as well. There must be real and genuine public interest involved in the litigation 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. 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 or any oblique consideration. These aspects were highlighted by this Court in *Janata Dal Vs. H.S. Chowdhary and Others*, and *Kazi Lhendup Dorji Vs. Central Bureau of Investigation and Others*, 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*,

18. 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 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 to enrich

themselves. 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.

22. 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 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 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 utilized for disposal of genuine cases. It is also noticed that petitions are based on newspaper reports without any attempt to verify their authenticity. As observed by this Court in several cases newspaper reports do not constitute evidence. A petition based on unconfirmed news reports, without verifying their authenticity should not normally be entertained. As noted above, such petitions do not provide any basis for verifying the correctness of statements made and information given in the petition. It would be desirable for the Courts to filter out the frivolous petitions and dismiss them with costs as afore-stated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts.

25. This is also a moot question whether the tender notice can be questioned and whether the Courts have the jurisdiction to interfere with the orders, which is in the domain of the Executive?

26. Undoubtedly, the Courts cannot interfere unless the action is arbitrary/ outcome of malice/mala fide one. The petitioner has not arrayed any person as party nor demonstrated how officer(s)/authority(ies) have exercised their power arbitrarily or mala fidely in order to show favour to any person/company. It is also not known who is that person/company.

27. The Apex Court in the case of Michigan Rubber (India) Ltd. Vs. The State of Karnataka and Others, held that the grant of contract, fixation of value of tender formulation of tender conditions are not amenable to judicial interference except on the ground of unreasonableness or arbitrariness. It is apt to reproduce para 19 of the judgment herein:

19. From the above decisions, the following principles emerge:

(a) the basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by Courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by Court is very restrictive since no person can claim fundamental right to carry on business with the Government.

28. In *Tejas Constructions and Infrastructure Pvt. Ltd. Vs. Municipal Council, Sendhwa and Another*, the Apex Court has laid down some principle.

29. It is profitable to mention herein that in the writ petition, the petitioner has not given his parentage and other particulars. He has also not annexed any material with the record to substantiate that he is the Secretary General of All India Student Federation and how he has filed this petition is not forthcoming.

30. The respondents in para 2 (supra) of the preliminary submissions of their reply as also in reply to para 5, have specifically averred that last year 4000 laptops/net books were supplied and none has made any complaint. This statement of the respondents has not been denied by the writ petitioner while filing rejoinder. Further, none has appeared before this Court to say that the laptops/net books have affected the health of the students.

31. The respondents have specifically replied all the averments and have demonstrated how the Expert Committee met, gave their technical opinion and thereafter, the tender was issued. The petitioner has failed to rebut the said pleadings, specifically the pleadings made in para 2 of the preliminary objections, in rejoinder.

32. The pleading not specifically denied is presumed to be admitted. The Apex Court in the cases of *Asha Vs. Pt. B.D. Sharma University of Health Sciences and Others*, and *M/s. Gian Chand and Brothers and Another Vs. Rattan Lal @ Rattan Singh*, held that when a plea is not specifically denied, it is presumed to be admitted.

33. Thus, in the absence of any specific rebuttal by the petitioner qua para 2 of the preliminary submissions made by the respondents in their reply, it can be

safely presumed that the laptops/net books supplied last year have not adversely affected the health of any of the students. There is also no such proof on the file to prove that the laptops/net books, which were supplied last year to the meritorious students, have adversely affected the students in any way.

34. It pains us to record that this petition became the cause of delay in supplying the laptops/net books to the needy/meritorious students of the State, which is against the public interest and against the interest of students in this order of life, for which the petitioner owes an explanation.

35. In the given circumstances, it appears that the petitioner has filed this petition on behalf of some companies or is motivated.

36. Having glance of the above discussion, we are of the considered view that this writ petition merits to be dismissed with costs quantified at Rs. 25,000/-, to be deposited with the H.P. High Court Bar Association Welfare Fund, to be utilized for the welfare of the Bar Association. Dismissed as such alongwith all pending applications. Interim directions, if any, vacated.