

(1999) 07 PAT CK 0069
In the Patna High Court
Case No : C.W.J.C. No. 7673 of 1998

Nilamber Mishra and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-07-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2000 Patna 150 : (1999) 9 PLJR 897

Hon'ble Judges : J.N. Dubey, Acting C.J.; R.M. Prasad, J

Bench : Division Bench

Advocate : Tara Kant Jha and Gajendra Jha, for the Appellant; J.P. Karn, Sr. CGSC, Rakesh Kumar, for C.B.I., Maya Nand Jha, JC to AAG No. II, S.D. Yadav, for Marketing Board, Rajendra Prasad Singh Naresh Dikshit, S. Alamdar Hussain and Ashok Kr. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

1. Petitioners by way of Public interest Litigation have sought for appropriate writ, rule, order or direction commanding the respondent No. 1 to entrust the investigation into the allegations made against the respondent No. 10, Sulabh International, Patna and respondent No. 11, Bindeshwar Pathak, to the Central Bureau of Investigation.

2. Petitioners claim themselves to be social workers interested in the welfare of the public at large. According to them, a large scale bungling has been done by the respondent No. 10 with the aid and assistance of the other respondents. The further claim of the petitioners is that the State Government has granted approval for handing over the investigation to the Central Bureau of Investigation but the respondent No. 1 is sitting tight over the matter with the result that no progress has been made in the matter so far. On the other hand, claim of the respondent No. 19 is that this writ petition is not maintainable as Public Interest Litigation as the petitioner No. 1 is Vice-President of Gramina Sauchalaya Sansthan, Patna, which is its competitor in the trade. It is further claimed that

in view of growing popularity of the respondent No. 10, several other organisations which are engaged in this trade and are not in a position to compete with it, are making one attempt after other to discredit it by dragging it into unnecessary litigation.

3. Heard the learned counsel for the parties and perused the record.

4. Learned counsel for the petitioners contended that considering the fact that the respondent No. 1 has embezzled and misappropriated public money running into crores of rupees, it is a fit case for directing the respondent No. 1 to entrust the investigation to the Central Bureau of Investigation. On the other hand, learned counsel for the respondent No. 10 while contesting the claim of the petitioners on merit, contended that this writ petition is not maintainable as Public Interest Litigation. According to him, the petitioners belong to the organisations which are engaged in this trade and are not in a position to compete with the respondent No. 10 and have filed this writ petition to satisfy their personal grudge and enmity.

5. We first propose to consider the objection of the learned counsel for the respondent No. 10 to the maintainability of the writ petition as Public Interest Litigation.

6. As stated above, while the petitioners claim themselves to be social workers having no personal interest in the matter, respondent No. 10 claims that they belong to the organisations which are engaged in this trade and are not in a position to compete with the respondent No. 10.

7. In order to appreciate the argument of the learned counsel for the respondent No. 10, relevant paragraphs of the counter-affidavit are quoted below :

"3. That before replying to the paragraphs mentioned in the counter-affidavit the deponent wants to bring to the notice of the Hon"ble Court the mala fide nature of the writ petition as well as the previous grudge of the petitioner against the deponent which has culminated in filing of this writ application.

4. That the petitioner No. 1 claims to be the "elected Mukhia of the last Gram Panchayat election from Saurath Gram Panchayat". He also states that he is an active social worker attached to various social and other organisation and has been raising demands for enquiries into misuse of public funds. What he has not stated is that this petitioner is also the Vice-President of one organisation, namely the GramIn Shauchalaya Sansthan, Patna, which organisation has for the last several years been actively engaged in maligning and harassing Sulabh International Social Service Organisation and engaged in a war of attrition against it as facts stated hereinafter will show.

5. That the petitioner No. 1 in his capacity as the Vice-President of the said GramIn Shauchalaya Sansthan had specifically stated in a letter to the Chief Minister, Government of Bihar that he should be given work for construction of Sulabh Shauchalaya instead of Sulabh international which was already doing the

work. Further it is also apparent that the said letter reeks of deep personal animosity against Sulabh International (now Sulabh International Social Service Organisation). His constant failures to put a spanner in the excellent work being done by Sulabh international Social Service Organisation has resulted in his bearing a deep grudge and bitterness towards Sulabh International Social Service Organisation which is factually borne out from the contents of the said letter.

6. That furthermore as far back as 1-12-82 the petitioner No. 1 had also written to the Chief Minister, Government of Bihar canvassing the cause of Gramin Shauchalaya Sansthan of which he was the Vice-President Stating inter alia that the said Gramin Shauchalaya Sansthan should be recognised by the Urban Development Department, but the said Department was reluctant to do so. Facts stated later on in this writ petition will also clearly establish that the said Gramin Sauchalaya Sansthan has always written against Sulabh International Social Service Organisation because of their own failures and long standing grudge. It is thus quite obvious that in the garb of being a social worker, this petitioner is seeking to settle scores with Sulabh international Social Service Organisation through this writ application.

7. That as regards petitioner No. 2, he claims to be the Chairman of an organisation called "Sanitation." His personal animosity and grudge can also be established from the fact that in an intervenor petition filed in CWJC No. 7653 of 1998 (reported in Nalin Kumar Jha Vs. The State of Bihar and Others,) "Sanitation" has claimed that big organisation like Sulabh International Social Service Organisation is trying to scuttle smaller organisation like his and further "Sanitation" should be allotted the work being done by Sulabh International Social Service Organisation.

8. That another interesting aspect is that one Nalin Kumar Jha has also filed CWJC No. 7653 of 1998 against Sulabh international Social Service Organisation and others. A plain reading of the instant writ petition as well as CWJC No. 7653 of 1998 (Nalin Kumar Jha v. State of Bihar) clearly shows and establishes that both the writ petitions are more or less similar in nature. Even some of the paragraphs are verbatim reproductions of each other as also many of the Annexures. The deponents of both these writ applications as well as IA No. 10456 of 1998 filed in CWJC No. 7653 of 1998 and IA No. 13046 of 1998 also filed in CWJC No. 7653 of 1998 have all been identified by the same person.

11. That at this stage it may also be stated that one Sharda Kishore Sinha, President of an organisation called Swawlambi Samajik Seva Samiti who at one time was a social worker working for Sulabh International Social Service Organisation but was subsequently removed on the ground of misconduct filed a Public Interest Litigation in the Hon'ble High Court levelling all sorts of false and baseless allegations against our organisation. He prayed that a CBI enquiry be instituted against Sulabh International Social Service Organisation. A plain reading of the said writ petition which was numbered as CWJC No. 12502 of

1996 shows that the character and gist of the writ petition and its Annexures is very similar to the instant writ application.

12. That the aforesaid writ petition (CWJC No. 12502 of 1996) was heard by a Bench comprising the then Chief Justice Mr. D.P. Wadhwa (now Hon''ble Judge of the Supreme Court of India) and Hon''ble Justice Mr. S.J. Mukhopadhyaya. The Court in its order dated 19-12-96 doubted the bona fide of the petitioner and not only dismissed the application but awarded a cost of Rs. 2500/- also."

8. These paragraphs of the counter affidavit have been replied by the petitioners in paragraphs 13, 14, 15 and 17 of the rejoinder affidavit which read thus :

"13. That the statement made in paragraph No. 3, 4, 5 and 6 of the counter-affidavit under reply are wrong and misleading. The allegation of mala fide and previous grudge against the petitioners is unfounded one. The allegation levelled by the petitioners have been substantiated under the preliminary enquiry report. Reckless allegations have been levelled against the petitioners solely to monopolise the grade and to swallow and throttle the growing organisation and drag them in series of litigations. Since the respondent No. 11, the founder of respondent No. 10 has waged a war against the existence of the organisation namely Gramin Sauchalaya Sansthan, the petitioner No. 1 in his capacity as the Vice President of the said organisation has prayed for proper protection and also to institute enquiry into the affairs of the respondent organisation. However, the petitioner No. 1 is not the office bearer of the said organisation.

14. That the statement made in paragraph 7 of the counter-affidavit under reply is wrong and misconceived. "Sanitation" has always raised its voice against the monopolisation without any animosity and grudge against any organisation.

15. That the statement made in paragraph No. 8 of the counter-affidavit under reply is misleading. Certain facts cannot be ignored and the same cannot be twisted in a manner suited to one's will. Hence same statements may be identical which cannot be termed otherwise. The counter affidavit under reply has produced a distorted version of facts and in same pari materia.

17. That the statement made in paragraph Nos. 11 and 12 of the counter affidavit under reply is distorted version of the fact. The Hon''ble Court has not dismissed the said writ application on merit but on merely technical ground. However, the deponent has got no specific information and intention in respect of merit, demerit of the said writ application."

9. From the above it is clear that the petitioners belong to the organisations which are engaged in this trade and are not in a position to compete with the respondent No. 10 and have filed this writ petition to satisfy their personal grudge and enmity.

10. It is now well settled that a Public Interest Litigation can be maintained only by a person or group of persons, who has no personal interest in the matter and are working for the benefit of those underprivileged and helpless, who cannot

come to the Court of law for the redress of their grievance. Our this view finds support from a decision of the Supreme Court in S.P. Gupta Vs. President of India and Others, , which reads thus :

"But we must hasten to make it clear that the individual who moves the Court for judicial redress in cases of this kind must be acting bona fide with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the Court should not allow itself to be activated at the instance of such person and must reject his application at the threshold, whether it be in the form of a letter addressed to the Court or even in the form of a regular writ petition filed in Court."

In AIR 1991 420 (SC) the Supreme Court held as under (Para 7) :

"Public Interest Litigation cannot be invoked by a person or body of persons to satisfy his or its personal grudge and enmity. If such petitions under Article 32, are entertained it would amount to abuse of process of the Court, preventing speedy remedy to other genuine petitioners from this Court. Personal interest cannot be enforced through the process of this Court under Article 32 of the Constitution in the gain of Public Interest Litigation. Public Interest Litigation contemplates legal proceeding for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or Ignorance of law. A person invoking the Jurisdiction of this Court under Article 32 must approach this Court for the vindication of the fundamental rights of affected persons and not for the purpose of vindication of his personal grudge or enmity. It is duty of this Court to discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extraordinary writ jurisdiction of this Court for personal matters under the garb of public interest litigation."

In the Janata Dal Vs. H.S. Chowdhary and Others, , the Supreme Court observed (Para 107) :

"It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL 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 before the Court for vindicating any personal grievance deserves rejection at the threshold."

In Dr. Nandjee Singh Vs. P.G. Medical Students Association and others, , the Supreme Court ruled (Para 12) :

"We have, therefore, not understood how the respondent-Association would convert an individual dispute into a public interest litigation. We are of the view

that cases where what is strictly an individual dispute is sought to be converted into a public interest litigation should not be encouraged."

Similar view was taken by a Division Bench of this Court in *Ratnesh Kumar Singh v. State of Bihar* 1996 (1) PLJR 179 relevant portion of which reads as under :-

"In our considered opinion P.I.L. is not to be taken lightly nor the same need be encouraged. It has become luxury litigation filed by a particular petitioner with oblique motive in one form or the other. We must have positive check on the free flow of such litigation.

"In our opinion, the dispute involved in the present writ petition is an individual dispute for which the students or their parents would have come forward and filed writ petition. In the circumstances, in our opinion, the present petition in the form of P.I.L. is not maintainable."

"We have to be conscious in entertaining a P.I.L. and we must ascertain whether it is genuine, bona fide and unavoidable litigation, otherwise traditional litigation of the High Court would suffer and this Court would usurp the function of the administrative and executive."

Same view was taken by a Division Bench of this Court in *CWJC. No. 4186 of 1999 (Samta Party v. Union of India)*, decided on 22-6-1999 (reported in *Samta Party and Another Vs. The Union of India (UOI) and Others*,).

11. In our opinion, the petitioners in the garb of Public Interest Litigation are hying to satisfy their personal grudge and enmity against the respondent No. 10 which is not legally permissible. We are in agreement with the learned counsel for the respondent No. 10 that this writ petition is not maintainable as Public Interest Litigation.

12. Learned counsel for the respondent No. 10 has also produced a certified copy of judgment of this Court in *CWJC No. 7653 of 1998* (reported in 1999 (20) PLJR 808) (*Nalin Kumar Jha v. State of Bihar*) to show that the organisations which are engaged in this trade and are not in a position to compete with the respondent No. 10 have been making repeated attempts to malign the respondent No. 10 by filing one writ petition after another. It appears that the State Government selected five voluntary organisations including the respondent No. 10 for entrusting the work of conversion of service latrines and construction of public toilets on 7-7-1992. One Ram Singh (filed CEISC No. 13413 of 1992 in this Court which was dismissed on 3-11-1993. Subsequently, one Sharda Kishore Sinha filed *CWJC No. 12502 of 1996* by way of Public Interest Litigation substantially for the same relief which was dismissed by a Division Bench on 19-12-1996. The relevant portion of the order reads thus :

"We are not satisfied with the bona fide of the petitioner in filing this writ petition. This writ application is dismissed with cost of Rs. 2,500/-. The cost shall be paid within a fortnight to the Patna High Court Council of Legal Aid and Advice. Let a copy of this order be sent to the Secretary, Patna High Court

Council of Legal Aid and Advice."

Thereafter, one Nalin Kumar Jha filed CWJC No. 7653 of 1998 which was dismissed on 14-5-1999 (reported Nalin Kumar Jha Vs. The State of Bihar and Others,). While dismissing the writ petition, this Court observed :

"So far as the second prayer is concerned, it may be noted that earlier one Nilamber Mishra and another filed CWJC No. 7673 of 1998, by way of public interest litigation, seeking the same relief. It is stated in the counter-affidavit filed on behalf of respondent No. 29, and not denied by the petitioner, that the aforesaid Nilamber Mishra is the Vice President of Gramin Sauchalaya Sansthan. The present writ petition, consisting of 35 paragraphs, lifts verbatim more than 20 paragraphs from the writ petition in CWJC No. 7673/1998 and uses as annexures the same documents which were enclosed with the earlier writ petition."

13. Thus, three attempts made by the persons connected with the organisations which are engaged in this trade and are not in a position to compete with the respondent No. 10 have already failed. This is the fourth attempt on their behalf to discredit and malign the respondent No. 10. The fact that the persons connected with the organisations which are engaged in this trade and are not in a position to compete with the respondent No. 10 have been making one attempt after another to discredit and malign the respondent No. 10 also supports the argument of the learned counsel for the respondent No. 10 that the petitioners have filed this writ petition to satisfy their personal grudge and enmity.

In the result, the writ petition fails and is accordingly dismissed.