

(2011) 12 OHC CK 0006
In the Orissa High Court
Case No : Writ Petition (C) No. 26393 of 2011

Niranjan Tripathy

APPELLANT

Vs

State of Orissa and others

RESPONDENT

Date of Decision : 08-12-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 19 Rule 1, Order 19 Rule 3, Order 6 Rule 15, 80

Constitution of India, 1950 — Article 121, 124, 14, 15, 226

Orissa High Court Public Interest Litigation Rules, 2010 — Rule 3, 5, 6, 7, 8

Citation : (2011) 12 OHC CK 0006

Hon'ble Judges : V. Gopala Gowda, J; I. Mahanty, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

V. Gopala Gowda, C.J.—This writ application in the nature of Public Interest Litigation is filed by a practicing Advocate who has put in five years of practice at the Bar seeking for an inquiry by the Central Bureau of Investigation to trace out the truth regarding allotment of plots out of Discretionary Quota as to (i) whether before allotment out of the Discretionary Quota the eligibility of the beneficiaries was to be enquired into; (ii) whether individual statement of the beneficiaries are recorded for just requirement of the plot necessitating an allotment from Discretionary Quota by the Chairman; and (iii) whether the beneficiaries of the plots in question are required to be treated separately beyond the rules made for the general public as a whole, urging various facts and furnishing a list of sitting Judges and former Judges of this Court, former Judges of the Supreme Court, IAS, IPS and IFS Officers with their names and address by producing Annexure-1 along with a list of plots at Bidanasi project area granted under the Discretionary Quota during the period 2000-2007, as well as, enclosing certain extracts from the websites of Outlook India.com dated December 6, 2004 under the heading "Salt Lake Scam" and extract from The Sunday Indian dated September 14, 2011, The Telegraph dated November 9,

2010 under Annexure-2 series. Annexure-3 series is the extract of the Frontline magazine dated May 10-23 2003 with reference to a former Delhi High Court Judge Shamit Mukherjee.

2. A further affidavit has been filed on 31 October, 2011, sworn to by the petitioner by annexing thereto, the extract of documents under Annexures-4 and 5, i.e., the extract of the Procedure for allotment of assets of Bhubaneswar Development Authority" and the "Further Information Allotment of plot/ Commercial plot/Institutional at Bidanasi Project Area from the year 2004 to 2007".

3. Apart from the above, the petitioner has filed Misc. Case No.17846 of 2011 on 16th November, 2011 with a prayer to call for the records from the Cuttack Development Authority and Bhubaneswar Development Authority (hereinafter called "CDA" and "BDA" respectively) and direct them not to allow further construction on the plots made available under the Discretionary Quota and further sought for orders to dissociate all the favoured personalities from being directly or indirectly involved in the affairs of the cities of Cuttack and Bhubaneswar including IAS or IPS officers, pending disposal of the above writ application and further to pass orders to keep the favoured Hon'ble sitting Ministers off the portfolio pending disposal of the writ petition too, and pass any other and/or further order/orders as deemed fit and proper under the circumstances.

The petitioner sought to annex thereto Annexure-6 downloaded from the website of the Open magazine, dated 5 November, 2011. Annexure-7 to this Misc. Case relates to Information Allotment of plot/Commercial plot/Institutional at Bidanasi Project Area, from the year 2004 to 2007," which is the repetition of Annexure-5 filed in the additional affidavit dated 31st October, 2011. The documents produced at Annexures-8, 9, 10 and 11 are claimed to be copies of the applications purportedly to have been sent by certain sitting Hon'ble Judges and former Judges of this Court seeking for allotment of sites. Annexure-12 series are copies of news clippings of the local daily The Samaja dated November 13, 2011.

4. The petitioner has further filed another Misc. Case No.17941 of 2011 on 21.11.2011 seeking leave of this Court to withdraw the above writ petition, with liberty to file a fresh writ petition in the form of a Public Interest Litigation in accordance with the Orissa High Court Public Interest Litigation Rules, 2010 (hereinafter called "the PIL Rules, 2010").

5. The following issues arise for consideration:

(i) Whether the writ petition, which is filed by a practicing Advocate, is a genuine public interest litigation petition?

(ii) Whether the public interest litigation is filed by the petitioner following the procedure prescribed in the Orissa High Court Public Interest Litigation Rules,

2010 framed pursuant to the direction given by the Apex Court in the case of State of Uttaranchal Vs. Balwant Singh Chaufal and Others, ?

(iii) Whether the petitioner has made out a case for entrusting the matter to the CBI for inquiry and for grant relief as prayed for in the writ petition, additional affidavit and in the Misc. Cases No.17844? and

(iv) Whether the Misc. Case No.17941 of 2011 is filed with the necessary bona fide seeking leave of this Court to withdraw the writ petition with liberty to file a fresh one?

6. Before delving into the facts pleaded, in order to answer the aforesaid issues that fall for our consideration, it would be very useful to refer to certain orders passed in the present case for the purpose of examining the genuineness/bona fide on the part of the petitioner in filing the present writ petition, additional affidavit as well as Misc. Cases along with the documents referred to supra.

7. On 29.9.2011, this matter was listed for hearing on the question of admission. After hearing Mr Srinivas Mohanty, learned counsel for the petitioner, this Court passed the following order:

Order dated 29.9.2011

Heard learned counsel for the petitioner and learned Government Advocate.

Before issuing any notice, we direct the learned counsel for the petitioner to produce the discretionary quota regulations/guidelines, if any, along with other necessary documents in support of his case.

List this matter after the ensuing Puja Holidays.

Since we have not issued any notice in this matter, we direct the parties not to go to the Press/Electronic Media for publication of any type of news item with relation to this case.

(Underlined for emphasis)

8. In spite of the observations made in the said order and during the pendency of the present proceedings, the allotment of Discretionary Quota to various persons was widely published both in the electronic media as well as print media. Certain extracts of such press coverage have been filed by the petitioner by way of additional affidavit as Annexures-6 to 12 to Misc. Case No.17846 of 2011. This fact by itself clearly exhibits that the real object behind filing of this writ petition is nothing but getting publicized through media by maligning various constitutional functionaries and others.

9. On 16.11.2011, when the matter was again listed, the petitioner filed Misc. Case No.17846 of 2011. Reliance was placed on a further affidavit of 31st October, 2011 and also on the averments made in Misc. Case No.17846 of 2011. After hearing learned counsel, to the query of the Court as to whether the petitioner had complied with the provisions of the Orissa High Court Public

Interest Litigation Rules, 2010, learned counsel for the petitioner pleaded ignorance of the said Rules and stated that he intends to comply with the same and, hence for such purpose, requested for adjournment of the matter. Adjournment was allowed and the matter was fixed to the next week.

10. Thereafter on the next date i.e. on 24.11.2011, instead of complying with the direction dated 16.11.2011 and taking steps to bring the writ petition within the parameters of the PIL Rules, 2010, he filed another Misc. Case No.17941 of 2011 in the Registry, seeking for withdrawal of the writ petition with liberty to file a fresh writ application in the PIL format in accordance with the PIL Rules, 2010.

11. In the above backdrop, we have heard learned counsel for the petitioner on the writ petition, further affidavit, pending Misc. Cases referred to supra, with a view to find out as to whether the averments made in the writ petition, further affidavit and Misc. Case are in conformity with the PIL Rules, 2010, and also to prima facie verify the credential of the petitioner as to whether this PIL satisfies the directions issued by the Apex Court in the case of State of Uttaranchal Vs. Balwant Singh Chaufal and Others, and involves public interest.

12. At this stage, we would like to state the facts in order to find out as to whether there is genuineness for treating the same as Public Interest Litigation and to answer the issues that are formulated in this writ petition in paragraph-5 above.

13. The petitioner has stated that in the writ petition that apart from practicing Law, incidentally, he was visiting the State Secretariat. He alleged that he got to know that Judges of this Court have received plots from the CDA from out of the Discretionary Quota based on extraneous consideration and, this being the talk in the corridor of the State Secretariat, the petitioner felt injury to his feelings and enquired into the factual position. He learnt that on 15.02.2008, the then M.L.A. of Banki Constituency had raised a question on the floor of the Assembly about the allotment of plots in favour of IAS/IPS/IFS/Judges/Judges of the High Court and in answer thereto the factual position for allotment of the aforesaid plots were tabled before the floor of the Legislative Assembly of Orissa referring to Annexure-1 to the writ petition.

14. It is further stated that in view of the facts and circumstances of the case, the petitioner considers it as his right as well as his duty to see that there must be proper administration of justice in accordance with law thereby no general public ought to be discriminated in respect of allotment of plots under the Discretionary Quota, and thereby the constitutional rights guaranteed under Articles 14 and 15 of the Constitution of India should remain protected.

15. Further, it is alleged that a glance at Annexure-1 would also indicate that the plots allotted were not of any definite size nor belong to any particular category under the scheme of the Development Authorities. As could be seen from the allotment of plots, their sizes vary from allottee to allottee and, more particularly, it is seen that the plots in question are allotted in the prime localities of the area

concerned. Therefore, it is alleged that without any scheme being followed, the Discretionary Quota of the Chairmen of the Development Authorities referred to above, is alleged to have been exercised indiscriminately.

16. It is further stated that as per the common understanding of law, that when something is to be done within the "discretion" of the authorities, the same is required to be done in accordance with the rules, reason and justice and not according to private opinion and humour. In support of the said proposition of law, the petitioner placed reliance upon the decision of the Apex Court in S.G. Jaisinghani Vs. Union of India (UOI) and Others, . At paragraph-9 of the said judgment, it is held by the Apex Court that there shall be equality of opportunity for all citizens. At paragraph-14 of the said judgment it is defined that discretion when conferred upon the executive authorities, it must be confined within clearly defined limits. It means sound discretion guided by law. It must be governed by rule, not by humor; it must not be arbitrary, vague and fanciful.

17. Learned counsel for the petitioner has further placed strong reliance upon the decision of the Apex Court in Tarak Singh and Another Vs. Jyoti Basu and Others, . It is alleged that having scanned through the allotment of plots by the Cuttack Development Authority in Bidanasi Project area, it is noticed that the opp. party-CDA is believed to have made over crippled information to facilitate the Question And Answer Session of the Assembly inasmuch as although Hon''ble Judges of this Hon''ble High Court are the beneficiaries of the alleged allotment from out of the Discretionary Quota. They were named in ordinary words without any mention about their designation and even the residential address was not placed properly. In this view of the matter, doubts came to the mind of the petitioner as to why the Development Authorities are not clean in making the correct statements.

18. It is further stated that during the span stretching from 2000-2007 as many as 22 numbers of beneficiaries were allotted with plots in Bidanasi Project area from out of the Chairman's Discretionary Quota. The said 22 numbers of allottees are known for their high posts in the State administration and they have been appeased by the CDA, having not framed any basic principles for such allotment of plots in the prime localities. The said allotments have been made indiscriminately without any definite size of the plot, and as and when whatever plots were found available regardless of the need of the beneficiaries and public convenience.

19. It is alleged that the sitting Judges, former Judges of this Court and former Judges of the Supreme Court are the beneficiaries of the allotment of plots under the Discretionary Quota apart from the bureaucrats of the State whose list has been furnished in the writ petition.

20. It is further alleged that the top position bureaucrats have equally been allotted with plots under the Discretionary Quota at the prime locations of Bhubaneswar City. The same has been done taking into consideration the

positions of the officers in the hierarchy of administration of the State, which has become centre of attraction for the allotment of plots under the Discretionary Quota of the Chairman. Therefore, it is alleged that the allotment of plots is vitiated on account of indiscriminate allotment of plots to the persons holding key positions in the State Administration without any reasonableness thereby discriminating the public at large from the possibility of getting such allotment of plots in the area in question

21. In the additional affidavit filed on 31st October, 2011, the procedure for allotment and percentage of allotment under the Discretionary Quota as well as the eligibility criteria of the BDA has been annexed. In Misc. Case No.17846 of 2011 also, some allegations are made with regard to introduction of statutory rules by the Government to rationalize public distribution system and to ensure proper distribution of essential commodities to the common man and similar persons who are deficient of land in the upcoming cities. The State Government has introduced the Orissa Development Authorities Act, 1982. As per the provisions of the said Act, the Government lands developed for housing plots are devised to be reasonably and rationally allotted among the intending persons under the definite plans. Looking at the paucity of land in the city of Cuttack, the Government has been pleased to construct a ring road between the river The Kathajodi and The Mahanadi, and out of the river bed, a vast patch of land was discovered for establishing township of Abhinaba Bidanasi, Cuttack. Reference has been made to certain averments in relation to development of township, which are germane to the purpose of present adjudication in this petition.

22. It is further alleged that the authorities, namely, BDA and CDA have indiscriminately distributed plots amongst the rich and influential persons. The same practice has been adopted since 2000 by the then Minister in-charge of the Ministry of Urban Land Development Department, Orissa in order to legalize his own land craze, willfully allotted plots to the Judges of the Court, particularly when an important PIL bearing O.J.C. No.6721 of 1992 was being heard by the Judges of the Court; the Judges of this Court have been the allotted with plots under the Discretionary Quota.

23. It is further alleged that no sooner the Judges of the Court have been benefited with such allotment of plots, the bureaucrats and high police officials and so also politicians have indiscriminately hijacked the benefits in the guise of the Discretionary Quota at the use of their respective powers and positions and made the Development Authorities thereby deficient of vacant lands for allotment to the applicants waiting for years together.

24. In other paragraphs reference is made to the extracts produced in relation to the Magazines adverted in the earlier paragraphs of the judgment, which have no relevance for the purpose of considering the prayers made either in the writ petition or Further Affidavit or Misc. Case No.17846 of 2011.

25. It is also relevant to verify the correctness of the statements made in the

writ petition, Further Affidavit and affidavit sworn to in the Misc. Case respectively. To verify the same, the relevant paragraphs of the said affidavits sworn to by the petitioner are required to be extracted as hereunder:

Affidavit to the writ petition

Para-3 : That I have collected Annexure-1 from one of the members of the Hon"ble House and I support the contents to be true so far as the exact xerox copy of the document is concerned.

Para-4 : That xerox copy of Annexure-1 is available with me for verification. I have retyped the contents for clarity and making the same readable for the better appreciation by the Hon"ble Court.

Para-5 : That Annexure-2 series are all available from the net which on being downloaded I filed the copies and I support the same being true so far as net news is concerned.

Further Affidavit dated 31st October, 2001

Para-6 : That the annexures filed in the case are all personally collected by the deponent from different private sources on the basis of which the above affidavit is filed; and since the contents for the annexure appears to be disclosing prima facie facts, the deponent has brought the same before this Hon"ble Court for further scrutiny; and in the event records relating to the alleged allotment of plot is called for, logistic conclusion in the matter may be arrived at.

Affidavit to Misc. Case No.17846 of 2011

Para-3 : That the annexures filed are mostly collected from different reliable sources for which the petitioner stands for the same.

26. Learned counsel for the petitioner also placed strong reliance upon the decision of the Apex Court in the case of Tarak Singh referred to supra. The relevant paragraph-23 of the said judgment is extracted as hereunder:

Para-23 : Since the issue involved in the present controversy will have far-reaching impact on the quality of the judiciary, we are tempted to put it on record which we thought to be a good guidance to achieve the purity of administration of justice. Even human being has his own ambition in life. To have an ambition is virtue. Generally speaking, it is a cherished desire to achieve something in life. There is nothing wrong in a judge to have ambition to achieve something, but if the ambition to achieve is likely to cause compromise with his divine judicial duty, better not to pursue it. Because if a judge is too ambitious to achieve something materially, he becomes timid. When he becomes timid there will be tendency to compromise between his divine duty and his personal interest. There will be conflict in between interest and duty. This is what exactly has happened in this case. With due respect to the learned Judge, Justice B.P.. Banerjee, he has misused his divine judicial duty as liveries to accomplish his personal ends. He has betrayed the trust reposed in him by the people. To say

the least, this is bad. The matter could have been different if the learned Judges got allotment from the Chief Minister's quota simplicitor like any other citizen.

Issue Nos.(i) and (iv)

27. As Issue Nos.(i) and (iv) are interlinked, they are answered together by assigning the following reasons:

28. It would be worthwhile to extract certain directions issued by the Apex Court in the case of State of Uttaranchal Vs. Balwant Singh Chaufal and Others, , to find out as to whether this writ petition is a genuine public interest litigation, which is filed by a practicing lawyer espousing the public cause, either to prevent public injury or to protect public interest. The Apex Court in the cited case adverted to the entire case law on the question of public interest litigation and the nature of cause of action for PIL and locus standi of a person to espouse public cause. The Apex Court at paragraph-198 after referring to the entire case law on the question and the definition of Public Interest Litigation from United State of America, England, Sout Africa, Pakistan, Srilanka, Nepal, and the approach of the Courts of the said countries with reference to their Constitution and extracting the definition of Public Interest Litigation as defined in the Black's Law Dictionary (6th Edition) at paragraph-29 of the said decision, has observed that the Council for Public Interest Law, set up by the Ford Foundation in USA, defined Public Interest Litigation, in its report of Public Interest Law, USA. The origin of Public Interest Litigation and evolution of the public interest litigation in India and the parameters to entertain public interest litigation have been succinctly laid down by the Apex Court in the aforesaid paragraph, which is extracted below for the purpose of examining as to whether the averments, allegations made with reference to the extract, documents produced and verification made on the affidavits sworn to by the petitioner fall within the definition of PIL and as to whether the present PIL is genuine one. The said paragraph-29 is extracted as hereunder:

Para-29 : The Council for Public Interest Law set up by the Ford Foundation in USA defined "public interest litigation" in its Report of Public Interest Law, USA, 1976 as follows:

Public interest law is the name that has recently been given to efforts providing legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary marketplace for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others.

(Holicow Pictures (P) Ltd. v. Prem Chandra Mishra, SCC p. 288, para 10 : AIR p. 918, para 19.) : (AIR 2008 SCW 343).

29. Further, at paragraph-198 of the said judgment directions were issued to the High Courts to examine as to whether the Public Interest Litigation petition

fulfilled the requirements as laid down by law. Those directions as at paragraph-198 of the said judgment read thus :

Para-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 PIL.

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

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

(6) The Courts 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 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.

30. The allegations and averments made against the sitting Judges, former Judges of this Court and former Judges of the Supreme Court have to be examined in the backdrop of the definition of PIL as to whether this petition comes within the parameters of PIL in respect of which category persons, in relation to either on the administrative or executive orders of the State are required to be examined by this Court as per the legal principles laid down by the Apex Court in *Holicow Pictures Pvt. Ltd. Vs. Prem Chandra Mishra and Others*, . It will be worthwhile to extract the relevant paragraph-176 of the case of *State of Uttaranchal v. Balwant Singh Chaufal & others* referred to supra, which reads as under:

Para-176: "In *Holicow Pictures Pvt. Ltd. Vs. Prem Chandra Mishra and Others*, , this Court observed as under:

"It is depressing to note that on account of such trumped-up proceedings initiated before the courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, unrepresented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters - government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenu expecting their release from the detention orders, etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the courts and having their grievances redressed, the busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity, break the queue muffing their faces by wearing the mask of public interest litigation and get into the courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the courts and as a result of which the queue standing outside the doors of the courts never moves, which piquant situation creates frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system.

The Court cautioned by observing that :

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 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.

* * *

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; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. The court has to strike a 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."

31. At paragraph-177 of the said judgment, the Apex Court has also observed referring to malice or frivolous or vexatious petition and imposition of cost in Indian Courts, U.S. Courts and Canadian Courts, where those courts shall impose monetary penalties upon the public interest claims regarded as privileges. Again at paragraph-188 in the said judgment referring to the case of M/s. Holicow Pictures Pvt. Ltd. (supra), the Apex Court observed that Judges who exercise the jurisdiction should be extremely careful to see that behind the beautiful veil of PIL, an ugly private malice, vested interest and/or publicity - seeking are not lurking. The court should ensure that there is no abuse of the process of the court.

32. The said observation is very pertinent to the case at hand having regard to the undisputed factual position. Vide order dated 29.09.2011, we had directed the learned counsel for the petitioner to produce the Discretionary Quota regulation/guidelines, if any, along with other necessary documents in support of the petitioner's case and directed the matter to be listed after the ensuing Puja Holidays, the relevant portion of the said order reads as hereunder:

Order dated 29.09.2011

Heard learned counsel for the petitioner and the learned Government Advocate.

Before issuing any notice, we direct the learned counsel for the petitioner to produce the discretionary quota regulation/guidelines, if any, along with other necessary documents in support of his case.

List this matter after the ensuing Puja Holidays.

Since we have not issued any notice in this matter, we direct the parties not to go to the Press/Electronic Media for publication of any type of news item with relation to this Case.

(Underlined for emphasis)

33. In spite of the aforesaid observation, as we have indicated in the narration of the fact portion of the judgment, both the print media and electronic media had extensively carried various articles and telecast news items of the subject matter

in this writ petition, even prior to the next of date of hearing, i.e., 16.11.2011, showing the pictures of the various houses, photographs of the Judges and other allottees and copies of which have also been annexed as Annexure-6 series-12 series to Misc. Case No.17846 of 2011 filed on 16.11.2011. The said documents, which are produced by the petitioner, would by themselves clearly establish the fact beyond doubt that, the real object of the petitioner behind invoking the PIL jurisdiction of this Court by filing this PIL, which is not in conformity with the Rules, 2010, was to allow to be telecast news items of the subject matter in this writ petition and published in the electronic media as well as print media with a designed intention to malign and disrepute the allottees whose names are referred to in this petition, some of them who are constitutional functionaries having constitutional protection in the interest of the institution of Judiciary which is the third limb of the Constitution and protect the independence of the Judiciary.

34. It has been time and again reiterated by the Constitution Bench decisions of the Supreme Court that, the institution of an independent Judiciary is the bedrock of democracy and rule of law so as to protect the human rights of the millions of people, particularly, the masses of the country who belong to the weaker sections of the society to enable Judges to discharge their constitutional functions without fear, favour or ill-will in order to maintain the rule of law.

35. The above conclusion of ours is further established from the conduct of the petitioner who filed Misc. Case No.17941 of 2011 dated 21st November, 2011 when the case got adjourned on 16.11.2011 to enable the petitioner to bring the writ petition in conformity with the PIL Rules, 2010 framed by this Court. Instead of doing so, the petitioner filed the aforesaid Misc. Case seeking withdrawal of the writ petition with liberty to file another writ petition, obviously after having achieved the real purported object behind filing of this PIL petition i.e. by getting undue publicity in the print as well as electronic media referred to supra and maligning various Hon"ble Judges of the High Court.

36. The aforesaid subsequent events and the conduct of the petitioner in filing the Misc. Cases would clearly go to show that the PIL is not filed with a bona fide intention to prevent any public injury or protect public interest. Therefore, the legal principles laid down by the Apex Court in catena of decisions referred to in the case of State of Uttaranchal v. Balwant Singh Chaufal referred to supra in all fours are applicable to the fact situation of the case at hand and compel us to record a finding that absolutely there are no bona fides on the part of the petitioner to espouse the public cause in this purported PIL as claimed by the petitioner in this writ petition.

37. In view of the observations made in different cases decided by the Apex Court with regard to the nature of Public Interest litigation, it is to be examined by us as to whether this PIL petition is a genuine one or not. The PIL can be initiated on behalf of the disadvantaged persons, who are illiterate or economically disadvantaged belonging to the Scheduled Caste and Scheduled

Tribe categories and persons who have no access to justice to get their grievances redressed through this Court. In this regard, it may be relevant to extract certain paragraphs from the decision of Guruvayoor Devaswom Managing Committee & another, (2007) 7 SCC 546, wherein a Three-Judge Bench of the Supreme Court after referring to its earlier Constitution Bench and other large number of decisions held as under:

50. The principles evolved by this Court in this behalf may be suitably summarized as under:

(i) The Court in exercise of powers under Article 32 and Article 226 of the Constitution of India can entertain a petition filed by any interested person in the welfare of the people who is in a disadvantaged position and, thus, not in a position to knock the doors of the Court.

The Court is constitutionally bound to protect the fundamental rights of such disadvantaged people so as to direct the State to fulfil its constitutional promises. (See S.P. Gupta Vs. President of India and Others, , People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, ; Bandhua Mukti Morcha Vs. Union of India (UOI) and Others, and Janata Dal Vs. H.S. Chowdhary and Others, .)

* * *

(iv) The common rule of locus standi is relaxed so as to enable the Court to look into the grievances complained on behalf of the poor, the deprived (sic), the illiterate and the disabled who cannot vindicate the legal wrong or legal injury caused to them for any violation of any constitutional or legal right. [See Fertilizer Corpn. Kamgar Union (Regd.) v. Union of India, S.P. Gupta, People's Union for Democratic Rights, D.C. Wadhwa (Dr) v. State of Bihar and BALCO Employees' Union (Regd.) v. Union of India.]

(v) When the Court is prima facie satisfied about variation of any constitutional right of a group of people belonging to the disadvantaged category, it may not allow the State or the Government from raising the question as to the maintainability of the petition.

(See: Bandhua Mukti Morcha.)

In Sachidanand Pandey v. State of W.B. this Court held: (SCC pp. 334-35, para 61)

61. It is only when courts are apprised of gross violation of fundamental rights by a group or a class action or when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the courts, especially this Court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the underdog and the neglected. I will be second to none in extending help when such help is required.

But this does not mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self-imposed restraint on public interest litigants.

38. Apart from the said reasons, it is also necessary for us to appreciate the constitutional protection given to the Judges of the Higher Judiciary, i.e., Judges of the High Courts and Supreme Court. The Apex Court in a Constitution Bench decision in the case of Sub-Committee of Judicial Accountability Vs. Union of India and others, after referring to Articles 121 and 124 of the Constitution of India, has made certain observations, which will be very relevant for the purpose of appreciating the case of the petitioner with a view to arrive at the conclusion whether the PIL is genuine one or not. Observations made at paragraph-66 the relevant portion is extracted as under :

We are constrained to say that certain submissions advanced on the prayer seeking to restrain the learned Judge from functioning till the proceedings of the committee were concluded lacked as much in propriety as in dignity and courtesy with which the learned judge is entitled. The arguments seemed to virtually assume that the charges had been established. Much was sought to be made of the silence of the Judge and his refusal to be drawn into a public debate. If we may say so with respect, learned Judge was entitled to decline the invitation to offer his explanation to his detractors. No adverse inference as to substance and validity of the charges could be drawn from the refusal of the learned judge to recognize these forums for his vindication. While the members of the bar may claim to act in public interest they have, at the same time, a duty of courtesy and particular care that in the vent of the charges being found baseless or insufficient to establish any moral turpitude, the judge does not suffer irreparably in the very process. The approach should not incur the criticism that it was calculated to expose an able and courteous judge to public indignity even before the allegations were examined by the forum constitutionally competent to do so. Propriety required that even before the charges are proved in the only way in which it is permitted to be proved, the Judge should not be embarrassed. The constitutional protection to Judges is not for their personal benefit; but is one of the means of protecting the judiciary and its independence and is, therefore, in the larger public interest. Recourse to constitutional methods must be adhered to, if the system were to survive. Learned Judge in his letter to the Registrar-General which he desired to be placed before the Court had, indeed, expressed deep anguish at the way the petitioners had been permitted themselves to sit in judgment over him and deal with him the way they did.

(Emphasis made by this Court)

39. The aforesaid principle has been referred by a Division Bench of the Karnataka High Court in the case of Subramani Vs. Union of India (UOI), . In the said judgment reliance was placed upon the case of Rondel v. W.Low, Denning M.R., 1966 All ER 657, it will be very necessary to extract the said portion, which reads as under:

...Every counsel has a duty to his client fearlessly to raise every issue, advance every argument and ask every question, however distasteful, which he thinks will help his client's case. As an officer of the Court concerned in the administration of Justice, he has an overriding duty to the Court, to the standards of his profession and to the public, which may and often does lead to conflict with his client's wishes or with what the client thinks are his personal interests. Counsel must not mislead the Court, he must not land himself to casting aspersions on the other party or witnesses for which there is no sufficient basis in the information in his possession, he must not withhold authorities or documents which may tell against his clients but which the law or the standards of his profession require him to produce. By so acting he may well incur the displeasure or worry of his client so that if the case is lost, his client would or might seek legal redress if that were open to him

* * *

...It is a mistake to suppose that he is the mouthpiece of his client to say what he wants.....He must disregard the most specific instructions of his client, if they conflict with his duty to the Court. The Code which requires a Barrister to do all this is not a code of law. It is a code of honor. If he breaks it, he is offending against the rules of the profession and is subject to its discipline.

40. A careful reading of Articles 121 and 124 of the Constitution and the law enacted by the Parliament with regard to the Judges Enquiry Act, 1968 give a clear indication that the conduct and alleged misdemeanor of a Judge are not open for public criticism, except in the manner prescribed under the provisions of Article 124 read with the Judges Enquiry Act.

41. For the reasons stated supra issue no.(iv) seeking permission to withdraw the writ petition with liberty to file the same again in conformity with the PIL Rules, 2010 cannot be granted as it would amount to an abuse of process of the Court having regard to the factual position that the petitioner is a practicing lawyer and he has been advised by a senior lawyer who has filed this writ petition, who is expected to know the PIL Rules framed by this Court pursuant to the direction of the Apex Court in the case of State of Uttaranchal v. Balwant Singh Chaufal referred to supra. The allegations made by the petitioner in this petition, additional affidavit and the miscellaneous petition are not supported by any authenticated documents, and when this was pointed out by this Court to the learned counsel for the petitioner at the time of hearing on admission that the writ petition is not in conformity with the PIL Rules, 2010, the learned counsel came up with the Misc. Case seeking withdrawal of the writ petition, which is a clear case of abuse of the process of this court by the petitioner who lacks bona fides to espouse the public cause.

For the aforesaid reasons, issue no.(i) is required to be answered against the petitioner.

42. Learned counsel for the petitioner strongly relied upon the decision in Tarak

Singh's case referred to supra. After referring to paragraphs-20 and 23 of the said judgment learned counsel submitted that the observations made in the said case are aptly applicable to the fact situation of the present case as the Apex Court in the said case dealt with a situation of Discretionary powers of the Chief Minister of West Bengal who exercised his power for allotment of the plots in favour of various persons including the then sitting Judge Mr B.P. Banerjee of the Calcutta High Court whose allotment has been quashed in the said case. Therefore, he contended that the said observations must be applied to the fact situation of this case and relief as prayed for in this petition be granted. The said submission of the learned counsel is wholly untenable for the following reasons.

43. No doubt, in the said case, the allotment in favour of Justice B.P. Banerjee along with others was the subject matter of challenge in the above referred case. The Apex Court while examining the nature and function of the said Judge had held that he had compromised his judicial duty in getting the allotment made in his favour. Therefore, the Supreme Court had quashed the allotment of plot made in favour of Justice B.P. Banerjee.

In respect of others, the Supreme Court after referring to the submissions made by learned counsel on behalf of number of other Judges of the High Court and other personalities who were allotted with plots under the Discretionary Quota, did not interfere with, which is very clear from reading of the observation made at paragraphs-20 and 23. Emphasis is laid down in a portion of the said judgment at paragraph-23 in support of the case of the petitioner, which has no application to the case in hand, particularly, having regard to the fact that allotment of plots made in favour of the other Judges was not interfered with by the Apex Court. While saying so, at the last sentence of paragraph-23, it is stated that, "the matter could have been different, if the learned Judge would have got allotment from the Chief Minister's quota simplicitor like any other citizens". At paragraph-20 of the said case, the Apex Court has also observed as hereunder:

Para-20 : It is also contended by Mr Ganguli that a large number of Judges of the High Court and the Supreme Court have also been allotted plots in Salt Lake City under the discretionary quota of the Chief Minister and it will be unfair to single out Respondent 24 for meeting out a different treatment. At the time of hearing of this writ petition, we requested the learned Senior Counsel to inform us whether any other Judge or Judges obtained the allotment order from the discretionary quota of the Chief Minister by compromising his judicial duties, we would also proceed against such allottee. He, however, was unable to receive any instruction in this behalf. It is trite, unequals cannot be treated equally.

(Underlined for emphasis)

44. The aforesaid principle has been reiterated by the Supreme Court in the subsequent judgment while dealing with PIL petition relating to allotment of Government land in the case of Joydeep Mukharjee Vs. State of West Bengal and

Others, . In the said judgment at paragraph-11 and Paragraph-20 Tarak Singh's case is extracted. Having regard to the observations made in Tarak Singh's case, which is reiterated in Joydeep Mukherjee's case referred to supra, the Supreme Court has made it very clear that the allotment made under the Discretionary Quota per se cannot be termed as illegal unless it is associated with compromising of the position of a Judge while discharging judicial function and getting undue benefit of allotment of the sites from the Development Authorities in the prime localities of the development authorities" area.

(Underlined for emphasis)

45. As could be seen from the averments and allegations made in this petition, the relevant portions of which are extracted above, no such allegation has been made by the petitioner against the Judges who are allotted with the plots, except stray allegations made against two Judges in relation to the writ petition in OJC No.6721 of 1999, which has nothing to do with allotment of plots from the Discretionary Quota by the Development Authorities. The said writ petition is in relation to demolition of unauthorized construction in the Cuttack City area and that has nothing do with allotment of plots under the Discretionary Quota. The aforesaid writ petition is a continuing writ petition to ensure that the unauthorized encroachers and public land grabbers shall not put up unauthorized construction on the public property. This has nothing to do with allotment of plots from the Discretionary Quota.

46. Therefore, we have to hold that the observations made in the cases of Tarak Singh and Joydeep Mukherjee do not support the case of the petitioner for our interference in this PIL, since we have already answered that it is not a PIL by recording our reasons in support of the aforesaid conclusion.

47. Accordingly, both the issue nos.(i) and (iv) are answered against the petitioner.

Issue No.(ii)

48. The writ petition is also liable to be dismissed as it is undisputedly not in conformity with the PIL Rules, 2010. The said Rules have been framed on the direction of the Supreme Court having regard to the fact that for over a period of 3 and half decades, there has been abuse of the constitutional courts, i.e., Supreme Court and High Courts by filing PILs, without there being genuineness in protecting the public injury or interest. The Apex Court after extracting the evolution of PIL and abuse of the process of the court at paragraph-198(1) in the case of State of Uttaranchal v. Balwant Singh Chaufal & Ors., directed all the High Courts in the country to frame rules to curtail filing of PIL only to see that genuine public interest litigation petition is filed to protect the persons socially and educationally backward and the persons who have no access to Justice to secure them justice and to protect their constitutional and human rights. Accordingly, vide notification date 28th April, 2010 the PIL Rules, 2010 have been framed by this Court, procedure is laid down, the definition of public

interest litigation and rules are prescribed, particularly Rule 3 with regard to the genuineness and bona fide and Rule 5 is regarding the credentials of the petitioner and to satisfy the correctness. The forms appended to the Rule 6 including the verifying affidavit and also the requirements of Rules 6, 7, 8 and 9 of the PIL Rules, 2010 have not been complied with in the present PIL. Rules 6 and 7 of the PIL Rules, 2010 of the Orissa High Court read as under:

Rule-6: Every petition filed in Court in the form of Public Interest Litigation under Article 226 of the Constitution of India shall be in the form appended hereto and shall be heard and disposed of by a Division Bench presided over by the Chief Justice or any other Bench assigned by the Chief Justice. Rule-7: The petition shall contain the facts of the case in chronological order. If the petition is based on news report, it must be stated as to whether the petitioner has verified the truth of the facts by personally visiting the place or by talking to the people concerned or has verified from the reporter or editor of the news paper concerned.

49. The same principle has been reiterated by the Apex Court in the case of Rohit Pandey v. Union of India and others, (2005) 13 SCC 702. Therefore, the documents produced in the writ petition as well as the Misc. Case are neither authenticated documents nor certified copies and there is no reference in the verifying affidavits with regard to which document is a certified copy and/or authenticated copy and the averments made are within petitioner's knowledge, belief and information, which are mandatory under the provisions of Order 19 Rule 3, CPC. Therefore, the documents produced in this proceeding cannot be placed reliance in support of the averments and allegations made by the petitioner against the allottees. Even assuming for the sake of arguments, on the basis of Tarak Singh's case at paragraph-23 that the allotment of plots under the Discretionary Quota by the Chairmen of the Development Authorities in favour of the persons who are referred in this writ petition, there is no further allegation insofar as the Judges are concerned that they have compromised in discharging their judicial function to secure allotment under the Discretionary Quota from the Chairman of the CDA. The same reason holds good for other allottees also.

50. Apart from the said reason, the allegations and averments made against the allottees are not properly verified as required under law. We have extracted the relevant paragraphs from the verifying affidavits of the writ petition as well as the Misc. Case referred in paragraph-25 supra. These verifications of facts pleaded in the writ petition and Misc. Case are mandatory as required under Order 6 Rule 15 read with Order 19 Rules 1 and 3, CPC. Rules 6, 7, 8 and 9 of the PIL Rules, 2010 deal with aspect to satisfy the correctness of the contents of the petition, which has not been done in the present case by the petitioner. If the petition is based on media reports, it must be stated in the petition as to whether the petitioner has verified the truth of the fact personally by visiting the place or by taking consent of the people or has verified from the Reporter or Editor of the newspaper concerned. The Apex Court in the case of The State of Bombay Vs.

Purushottam Jog Naik, , has laid down the principle, which is as follows:

We wish, however, to observe that the verification of the affidavits produced here is defective. The body of the affidavit discloses that certain matters were known to the Secretary who made the affidavit personally. The notification however states that everything was true to the best of his information and belief. We issue this out as slipshod verifications of this type might well in a given case lead to a rejection of the affidavit. Verification should invariably be modeled on the lines of Order 19, Rule 3 of the Civil Procedure Code, whether the Code applies in terms or not. And when the matter deposed to is not based on personal knowledge the sources of information should be clearly disclosed. We draw attention to the remarks of Jenkins C.J. and Woodroffe J. in "Padmabati Dasi" v. Rasik Lal Dhar", 37 Cal 259 and endorse the learned Judges' observations.

51. In this regard, the Apex Court in the case of Dr. B. Singh Vs. Union of India (UOI) and Others, at paragraph-4 has specifically observed as follows :

...It is too much to attribute authenticity or credibility to any information or fact merely because, it found publication in a newspaper or journal or Magazine or any other form of communication, as though it is gospel truth. It needs no reiteration that newspaper reports per se do not constitute legally acceptable evidence....

52. It is necessary for us to examine Rules 8 and 9 of the PIL Rules, 2010 of the Orissa High Court, which read as hereunder:

Rule-8: Before filing a PIL, the petitioner must send a representation to the authorities concerned for taking remedial action, akin to what is postulated in Section 80, CPC. Details of such representation and reply, if any, from the authority concerned along with copies thereof must be filed with the petition. However, in urgent cases where making of representation and waiting for response would cause irreparable injury or damage, petition can be filed straightway by giving prior notice of filing to the authorities concerned and/or their counsel, if any.

Rule-9: Frivolous and vexatious PIL -where the Court is of the opinion that the Public Interest Litigation petition filed by the petitioner is frivolous or vexatious or is devoid of public interest or is filed as camouflage to foster personal gain or is filed for extraneous and ulterior motives, it shall dismiss the same with exemplary cost.

53. Therefore, the rules are prescribed to do a particular thing in a particular manner is the well known legal principle laid down right from Privy Council. The said legal principle is also reiterated by the Supreme Court in the case of Babu Verghese and Others Vs. Bar Council of Kerala and Others, , wherein the Apex Court at paragraphs-31 and 32 has held as under

Paragraph-31: "It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any Statute, the act must be done in

that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor, (1875) 1Ch D 426 which was followed by Lord Roche in AIR 1936 253 (Privy Council) who stated as under:

"Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all."

For the reasons stated supra, we answer the said issue No.(ii) against the petitioner.

54. In the case on hand, from the averments made, it appears that some allotments were made during the years 2000 to 2007 which have by now become four to eleven years old. Therefore, by this time the rights of the allottees have been settled, which is one more strong reason on merit also. The principle of delay defeats equity will come on the way in exercising our equitable and discretionary relief in this particular litigation.

Issue No.(iii)

55. We have already answered issue nos. (i) and (iv) together and issue no.(ii) separately, against the petitioner after adverting to the relevant facts and legal contentions urged by the learned counsel for the petitioner by recording our reasons. Since we have answered the aforesaid issues against the petitioner, the further prayer made by the petitioner to entrust the matter to the CBI for inquiry is totally unnecessary as the petitioner has not made out a case for entrusting the matter to the CBI in exercise of our discretionary power under Article 226 of the Constitution. Accordingly, issue no.(iii) is also answered in negative against the petitioner holding that it is not at all a case for referring the matter to the CBI for inquiry.

56. In view of the above statement of law laid down by the Supreme Court, non-compliance of the mandatory rules prescribed by this Court for filing PIL, the petition is not maintainable. On this ground also, the writ petition is liable to be dismissed. Since we have answered all the issues against the petitioner by recording reasons, the writ petition is liable to be dismissed.

57. In view of our finding that this is not a genuine Public Interest Litigation petition, this necessarily warrants imposition of exemplary cost, but having regard to the fact that the petitioner is a young practicing Advocate, we desist from so doing with the hope and conviction that in the future the learned Members of the Bar would always keep in mind and abide by the dicta of the Constitution Bench of the Hon'ble Supreme Court in Sub-Committee of the Judicial Accountability v. Union of India and others referred to supra, relevant portion of which is reiterated as hereunder:

...While the members of the bar may claim to act in public interest they have, at the same time, a duty of courtesy and particular care that in the event of the charges being found baseless or insufficient to establish any moral turpitude, the judge does not suffer irreparably in the very process. The approach should not

incur the criticism that it was calculated to expose an able and courteous judge to public indignity even before the allegations were examined by the forum constitutionally competent to do so. Propriety required that even before the charges are proved in the only way in which it is permitted to be proved, the Judge should not be embarrassed. The constitutional protection to Judges is not for their personal benefit; but is one of the means of protecting the judiciary and its independence and is, therefore, in the larger public interest....

Accordingly, the writ petition stands dismissed.

I. Mahanty, J.

58. I agree.