
(2014) 04 GAU CK 0018
In the Gauhati High Court
Case No : PIL No. 1(K) of 2014

Paul Roy Paske

APPELLANT

Vs

State of Nagaland

RESPONDENT

Date of Decision : 29-04-2014

Acts Referred:

Constitution of India, 1950 — Article 225, 226

Citation : (2014) 2 GLT 834

Hon'ble Judges : Prasanta Kumar Saikia, J

Bench : Single Bench

Advocate : Biswajit Talukdar, Planjit Talukdar and Akum Jamir, Advocate for the Appellant; R.M. Deka, K.N. Choudhury, Sr. Advocates, Indra Neel Choudhury, Asangla and Keviphostu Angami, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Prasanta Kumar Saikia, J.—Heard Mr. Biswajit Talukdar, learned counsel assisted by Mr. Akum Jamir, learned counsel for the petitioner. Also heard Mr. R.M Deka, learned counsel for respondent No. 1 to 4 as well as Mr. K.N. Choudhury, learned counsel for the respondent No. 5 and Mr. Indra Neel Choudhury assisted by Mr. Keviphotsu Angami, learned Government Advocate appearing for the State. This PIL has been initiated for the following prayer;-

In the premises aforesaid, it is, therefore, respectfully prayed that your honour would graciously be pleased to admit this petition, call for the relevant records of the case, issue of Rule calling upon the respondents to show cause as to why:

(a) An appropriate direction shall not be made or issued to restrain/cancel the illegal extension of Distributorship in favour of M/s. Future Gaming Solutions Private Limited.

(b) An appropriate directions shall not be issued to the State Government for an enforcement of the various Lotteries Laws applicable to Nagaland strictly in consonance with Nagaland State Lotteries 2007.

(c) Mandamus should not be issued directing the respondents authorities to recall rescind and otherwise, forebear from further continuation of extension of distributionship to M/s. Future Gaming Solutions Private Limited, and all other process/proceedings arising out of the said action.

(d) Call for the relevant records of the Department of State Lotteries and upon cause or causes that may be shown and after hearing the parties as well as on perusal of records be pleased to make the Rule absolute and/or pass such other further order/orders as your lordships may deem fit and proper in the interest of justice.

2. The facts, as stated in the petition under Article 226 of the Constitution of India and which are necessary for disposal of the present proceeding, in brief, are that the Director of Nagaland State Lotteries (in short, the DNSL) was established in 1972 with the object of generating revenue for the State of Nagaland by means of organizing and conducting State Lotteries and for conducting such Lotteries smoothly, efficiently and in a transparent manner, the Nagaland State Lotteries (Regulation) Rules were framed which was amended from time to time in accordance with the provisions of law, laid down by Government of India under the Lotteries (Regulation) Act, 1998 and Lotteries (Regulation) Rules, 2010.

3. The Nagaland State Lotteries have been organizing, conducting and promoting State Lotteries both paper and on-line, as stated above, with the primary object of generating fund necessary for undertaking various welfare measures, such as, health, education, infrastructure development and anti-poverty measures etc.

4. In that connection, it has been stated that in terms of Entry 40 in List 1 of the Seventh Schedule of the Constitution of India, the Parliament of India enacted the Lotteries Regulation Act, 1998 in order to regulate the Lotteries and to provide necessary guidelines over the matter connected therewith and incidental thereto. All those rules were put in place over the years in order to ensure that Lottery business is conducted in an absolutely free, fair and transparent manner so that Lottery business, conducted by State, infuses confidence to the participants and all the persons and institutions connected therewith.

5. Since the inception the Lottery business in the State of Nagaland, same has never been conducted in the excepted way. Rather, the authority concerned, conducted the business in an arbitrary and discriminatory way favoring only some blue eyed boys which ultimately caused the State exchequer to sustain enormous loss, not only in terms of money but in the term of goodwill from the people as well. Such State of affairs had dragged the Directorate of Nagaland State Lottery Department, the apex body to deal with Lotteries business in the State of Nagaland, to the Court again and again.

6. It has also been stated that there was huge illegal nexus between the Directorate and Mr. S. Martin, Managing Director of M/s. Future Gaming Solutions India Private Limited and some other institutions which were unduly favoured by

the Directorate. In fact, such unholy connection went to such extent when the Directorate chose to settle the Lottery business in the State of Nagaland to the M/s. Future Gaming Solutions India Pvt. Ltd. from time to time, and that too, without following the procedure prescribed in the Act and Rules framed there-under.

7. What is worse is that this Court by its order dated 21.12.2012 had directed the aforesaid authority to settle the Lottery business in favour of the best of the bidders on initiating process for settlement of the Lotteries in the State of Nagaland in accordance with law within a definite time framed, vide order dated 21.12.2012, passed in W.P. (C) No. 130(K) of 2012.

8. Unfortunately, the Directorate honoured such direction, rendered in W.P. (C) No. 130(K) of 2012 not in observance but in huge violation thereof since instead of complying with the directions rendered in the proceeding aforementioned, the Directorate keeps on allowing M/s. Future Gaming Solutions India Pvt. Ltd. from time to time to run the lottery business in the State of Nagaland on ad hoc basis throwing to the wind rules and regulations enacted there-for.

9. Now, the petitioner claiming himself to be public spirited person, engaged in the profession of advocacy who noticed enormous illegality in running the lottery business in the State of Nagaland, has came forward with the present PIL seeking the reliefs which have incorporated hereinbefore requiring the Directorate of State Lotteries to float tender inviting the proposal from competent bidders and then to settle such lottery business with the best of bidders so that the purposes for which the Directorate was brought into existence could be achieved.

10. The notices of this proceeding were served on the respondents. While respondent No. 1 to 4 had filed common counter affidavits questioning the maintainability of the proceeding at hand, the respondent No. 5 entered appearance through Mr. K.N. Choudhury, learned Sr. Advocate who subscribed to the claims, made in the counter affidavit, submitted by the State respondents. He also offers argument on legal aspect on the matter in dispute in this proceeding to contend that the present proceeding is liable to be dismissed at the threshold for reasons more than one.

11. In their common counter affidavit, the respondent No. 1 to 4 too contend that this proceeding is not maintainable for variety of reasons. In that connection, it has pointed out that the petitioner has no locus standi since he does not suffer any injury for the alleged illegal conduct on the part of the Directorate of the Nagaland State Lottery which was arraigned as respondent No. 3 in this proceeding.

12. It has again been contended that the proceeding is not maintainable since the present proceeding was not structured as required under the Gauhati High Court (Public Interest Litigation) Rules, 2011 (in short, the Rules of 2011), Rule 10(d) in particular, contending that such rules are obligatory in nature since

those rules try to prevent the litigations by unscrupulous persons in the guise of PIL which is already proved to be important weapon in fighting corruption etc.

13. The extra ordinary jurisdiction of the writ court is meant for extra ordinary situation and the persons who choose to invoke such jurisdiction must disclose all material facts necessary for adjudication of the matter brought before the Court through a writ proceeding, more so, when such proceeding happens to be a PIL. But in this proceeding, the petitioner had suppressed some material facts, extremely necessary for due disposal of the dispute in this proceeding. Since the petitioner filed the present proceeding suppressing material facts, this proceeding needs to be dismissed on this count too.

14. Further the case of the respondents was that a proceeding in the nature of PIL is to be filed for some genuine cause having enormous implication and such proceeding is to be filed by persons genuinely concerned in the unlawful management of some matter of huge public importance. However, in our present case, there is indisputable evidence to show that the petitioner is a puppet in the hands of some unscrupulous persons who want to run the lottery business in the State of Nagaland in a way so that it sub serves their narrow and selfish end.

15. I have heard Mr. Biswajit Talukdar, learned counsel for the petitioner. Also heard Mr. K.N. Choudhury, learned Sr. counsel for the respondent No. 5 as well as Mr. R.M Deka, learned counsel appearing for respondent No. 1 to 4. Elaborating the contention that the petitioner has no locus standi to file the present proceeding, it has been stated that a person who suffers primary injury can approach this Court to have his right vindicated. Even if a person suffers injury which cannot be termed as primary injury, such sufferance will not offer any excuse for such a person to come before the Court with the litigation. In other words, sufferers of secondary injury cannot come to the Court seeking reliefs. This is more so, in case of litigations which are known as PIL.

16. In support of such contention, he has referred me to the decision of the Hon"ble Supreme Court in the case of S.P. Gupta Vs. President of India and Others, .

17. The relevant part is reproduced below-

25. Before we part with this general discussion in regard to locus standi, there is one point we would like to emphasis and it is, that cases may arise where there is undoubtedly public injury by the act or omission of the State or a public authority but such act or omission also causes a specific legal injury to an individual or to a specific class or group of individuals. In such cases, a member of the public having sufficient interest can certainly maintain an action challenging the legality of such act or omission, but if the person on specific class or group of persons who are primarily injured as a result of such act or omission, do not wish to claim any relief and accept such act of omission willingly and without protest, the member of the public who complains of a secondary public injury cannot maintain the action, for the effect of entertaining the action at the

instance of such member of person of the public would be to foist a relief on the person or specific class or group of persons primarily injured, which they do not want.

18. The principle, laid down in S.P Gupta (supra) has been followed by the Division Bench of this Court in the case of Wallamphang Roy Vs. State of Meghalaya and Others, .

19. The relevant part is reproduced below:--

7. Further, the petitioner within which the Court should entertain a PIL and the caution against the abuse of the same, is mentioned in paragraphs 24 and 25 in the SP Gupta's case (supra) as under 24. But we must be careful to see that the member of the public who approached the Court in cases of this kind is acting bona fide and not for personal gain or private or political motivation or other oblique consideration. The Court must allow its process to be abused by politicians and other to delay legitimate administrative action or to gain a political objective andre Rabre has wanted that political pressure groups who could not achieve their aims through the administrative process and might add, through the political process "may try to use the Courts to further their arms" these are some of the dangers in public interest litigation which the Court has to be careful to avoid. It is also necessary for the Court to bear in mind that there is a vital distinction between locus standi and justiciability and it is not every default on the part of the State or a public authority that is justiciable. The Court must take care to see that it does not overstep the limits of its judicial function and trespass into areas which are reserved to the executive and the legislature by the constitution. It is a fascinating exercise for the Court to deal with public interest litigation because it is a new jurisprudence which the Court is evolving a jurisprudence which demands judicial statesmanship and high creative ability. The frontiers of public law are expanding far and wide and new concepts and doctrines which will change the complexion of the law and which were so far as embedded in the womb of the future are beginning to be born 25. Before we part with this general discussion in regard to locus standi, there is one point we would like to emphasis and it is, that cases may arise where there is undoubtedly public injury by the act or omission of the State or a public authority but such act or omission also causes a specific legal injury to an individual or to a specific class of group of individuals. In such cases a member of the public having sufficient interest can certainly maintain an action challenging the legality of such act of omission but it the person or specific class of group of persons who are primarily injured as a result of such act of omission, do not wish to claim any relief and accept such act or omission willingly and without protest the member of the public who complains of a secondary public injury cannot maintain the action for the effect of entertaining the action at the instance of such member of the public would be to foist a relief on the person of specific class or group of person primarily injured, which they do not want.

20. According to learned counsel for the respondent No. 5, the petitioner is not a

resident of the State of Nagaland. Rather, he hails from the State of Meghalaya and has been practicing in Delhi. Therefore, he could not show how the alleged illegal running of lottery business in the State of Nagaland by the Directorate of Lotteries, Nagaland had injured him.

21. Even one assumes for the sake of argument for a moment that the petitioner suffers from some injuries due to alleged illegal conduct of authority aforesaid, such injuries by no stretch of imagination can be termed as primary injury to enable the petitioner to come up before this Court with the present proceeding. Such injury at best may be secondary injury and as held in *S.P. Gupta (supra)*, such injury hardly offer any ground to the petitioner to come before this Court with the proceeding at hand.

22. Refuting such contention, the learned counsel for the petitioner submits that since the petitioner is a resident of North East and since the alleged illegal activities on the part of the respondents and respondent No. 4 in particular have adversely affected the people of entire North East Region including the State of Meghalaya, it cannot be said that the petitioner does not suffer any primary injury due to alleged illegal activities on the part of the respondents.

23. I have considered the rivals submissions having regard to the materials on record as well as the decisions relied on by the petitioner. On making such an exercise, I found that on the materials, available on record, it cannot be concluded that the alleged illegal activities on the part of respondent No. 4 had caused the petitioner to suffer from any injury of primary nature. At best, he may be regarded to have suffered injury of secondary nature. As stated above, such injury of course does not offer such person any ground to come up before the Court with a lie.

24. Being so, I am quite in agreement with the learned counsel for the petitioner that the injury, if any, which the petitioner has sustained for the alleged illegal conduct on the part of the respondent No. 4 being secondary injury does not offer any ground to the petitioner to come up before this Court and to file a proceeding in the nature of PIL. As such, I am constrained to hold that the petitioner has no locus standi to file the present proceeding and on this count alone, the present proceeding is liable to be dismissed.

25. This brings us to the next allegation which revolves around the question that the present proceeding is liable to be dismissed since it was not structured in the term of requirements, specified in the Rule 10,10(d) of the Rules, 2011 in particular. For ready reference, the relevant Rule 10(d) is reproduced below:--

(d) A specific averment, in para-3 of the writ petition, specifying the class of persons for whose benefit the petition has been filed and as to how such persons are incapable of accessing the Court themselves.

26. It has also been contended that the requirements stated in Rule 10 of the Rule, 2011 is obligatory and in support of such contention, decision rendered by

this Court in the case of PIL No. 79/2012 decided on 21.12.2012 has been relied on. In the aforesaid decision, this Court was pleased to hold that the procedures, prescribed in Rule 10 of the Rules, 2011, are mandatory in nature.

27. The relevant part is reproduced below:--

Upon hearing the learned counsel for the parties and on a scrutiny of the writ petitioner, we are constrained to sustain the preliminary objection based on Rule 10 of the Rules. The Rules having been framed by this Court in exercise of the powers conferred by Article 225 of the Constitution of India and in accordance with the order dated 18.01.2010 of the Hon"ble Apex Court in Civil Appeal No. 1134-113 5/2002 (State of Uttaranchal v. Balwant Singh Chaulfa) laying down the practice and procedure for exercise of jurisdiction under Article 226 of the Constitution of India pertaining to a PIL, we are of the unhesitant opinion that the same have to be complied with strict senso. The language employed in Rule 10 unambiguously proclaim rigid adherence of the prescriptions thereof. As the instant writ petition does not conform to the enjoyments of Rule 10, we are not inclined to entertain the same.

28. A bare perusal of the Rule 10(d) reveals that if a person, who actually suffers from some injury/injuries arising out of the illegal act of the State or State instrumentalities, does not approach the Court with a PIL, then there must be specific averments in the petition assigning the reason(s) as to why the person who had actually suffered from such illegal activities has to approach the Court through someone else.

29. In our instant case, evidently, the petitioner is not the person sustaining primary injury due to the alleged illegal conduct on the part of the respondent No. 4. But he did not assign any reason as to why the persons who suffer from primary injury are not before the Court as required under the Rule 10(d) of the Rules, 2011. Since Rule 10(d) is obligatory in nature and since such Rule was not complied with, in my considered opinion, on this count too, the present proceeding is liable to be dismissed.

30. Referring to the paragraph-23, it has been stated that the petitioner incorporated some information which are not based on fact.

31. For ready reference the relevant part is reproduced below:--

23. That the main object for organizing, conducting and running lottery by State Government is to augment revenue. The object can be achieved through tender process and the purpose of floating tender is to get more revenue by making settlement at the best available price. The purpose of inviting bids to settle a public contract is to secure increased participation through competitive offers in the interest of public. In the instant case, no such tender process has been followed by the Government and the entire process of extension of agreement has been vitiated with unreasonableness and arbitrariness and with a view to accommodate few bidders of their choice for extraneous consideration which

would lead to competition at all. As a result of which the State Government would not get competitive bids and will have to settle at a minimum rate. Such an action of the State Government cannot be sustained inasmuch it will create monopoly in the lottery trade and will be against public interest and also a clear violation of established principal of law.

32. According to the State respondents, those statements are not based on facts. In that connection, it has been pointed out that way back in 2012, the process for settlement of lottery business in the State of Nagaland was initiated and in that connection, necessary NIT was floated. Pursuance to such NIT, several bidders took part and two firms, namely, the M/s. Future Gaming Solutions India Pvt. Ltd. and the M/s. Gaming India Distributor Limited being found most suitable bidders, were favoured with contract floated through NIT aforesaid.

33. However, M/s. Divyajyoti Distributor Private Limited preferred a proceeding before this Court seeking annulment of such contract, settled in favour of parties referred to above. Such proceeding was registered as W.P. (C) No. 130(K) of 2012. This Court on hearing the parties, set aside the settlement, so made, which was questioned in the W.P. (C) No. 130(K) of 2012. While disposing such proceeding, this Court directed the authorities concerned to invite fresh tenders for allotment of distributorship of Lotteries in the State of Nagaland in accordance with law.

34. While the State respondents were initiating process for settlement of distributorship of lotteries in the State of Nagaland, another round of litigation has been initiated before this Court and same is awaiting disposal. In view of above, the State respondents could not settle the distributorship of State lotteries in the State of Nagaland. However, in order to prevent loss to the exchequer, the State respondents were forced to make some intermediary arrangements in the interest of the State in the best possible terms.

35. The petitioner is aware of all those developments and inspite of that make some statements which are nothing but figments of wild imagination without any element of truth. The various documents attached with the petition, more particularly, the order dated 21.12.2012 passed in W.P. (C) No. 130(K) of 2012, the deed of interim arrangement dated 26.09.2013 make such position abundantly clear. Therefore, for suppression of such material facts, the present proceeding is liable to be quashed argues Mr. R.M. Deka, learned counsel for respondent No. 1 to 4.

36. On the perusal of record, I have found that the argument, advanced on this count, is borne out by materials on record. Since some material facts which have huge bearing on the outcome of the present proceeding were not incorporated in the PIL petition, I am of the opinion that the petitioner is guilty of suppressing material facts and therefore, on this count too, the present proceeding is liable to be dismissed.

37. Referring to the judgment rendered in the case of Wallamphang Roy (supra),

it has been stated that the facts and circumstances in Wallamphang Roy (supra) and facts and circumstances in the present proceeding are strikingly and stunningly similar. As stated above, in the Wallamphang Roy (supra), a Division of this High Court sitting in Shillong has held that unless a person suffers primary injury and unless a person has genuine interest in the dispute in the particular proceeding, a litigation in the form of PIL cannot be instituted.

38. Though the petitioner is from the State of Meghalaya, though he is a practicing lawyer and though he claims himself to be a person having intimate knowledge about the happenings in all the North-Eastern States, he chooses to file present proceeding knowing fully well that present proceeding in the term of the decision, rendered in Wallamphang Roy (supra), cannot be instituted.

39. According to learned counsel for the State respondents, the present proceeding is therefore, liable to be dismissed with exemplary cost. Our forgoing discussion, now, demonstrates that the above contention too has huge force and therefore, in my considered view, the proceeding at hand is liable to be dismissed on this count too.

40. Learned counsel for the petitioner Mr. Biswajit Talukdar has submitted that though some of the bidders applied for distributorship of lotteries in the State of Nagaland quoting a rate at Rs. 35,000/- for each normal lottery draw and Rs. 7,50,000/- for each bumper lottery draw, yet, the State respondents chose to settle distributorship of lottery in the State of Nagaland in favour of respondent No. 5 only for Rs. 15,000/- for each normal lottery draw and Rs. 5,30,000/- for each bumper lottery draw.

41. According to learned counsel for the petitioner, the settlement of distributorship in favour of respondent No. 5 at such a low rate is emphatic testimony of unholy nexus between the respondent No. 4 and the respondent No. 5 which ultimately causes the State exchequer to bleed profusely hurting the interest of millions of poverty stricken people who live much below the poverty line.

42. This contention was hotly disputed by the counsel for the respondents pointing out that this Court while disposing WP(C) No. 130(K) of 2012 had occasion to conclude that the price at which distributorship of lotteries was settled in the State of Nagaland in favour of respondent M/s. Future Gaming India Distributor Private Limited was too unrealistic. In that context, it has been submitted that this Court commented, as above, when the distributorship was allotted for Rs. 35,000/- for its normal lottery draw and Rs. 7,50,000/- for its bumper lottery draw.

43. Being so, by no stretch of imagination, it can be said that only for settlement of distributorship in favour of respondent No. 5 at the rate aforesaid, there was an unholy nexus between respondent No. 4 and respondent No. 5. More so, when some of the participants in the earlier round of tender process had offered rates seeking distributorship of lotteries which are very much similar to the rates

at which the State respondents has settled the distributorship in favour of respondent No. 5 on some ad hoc basis.

44. I have considered the above submissions in the light of materials on record and have found that this Court at one point of time came down heavily on the State respondents for settling the distributorship in favour of respondent No. 5 at Rs. 35,000/- for each normal draw and Rs. 7,50,000/- for each bumper draw saying that such rates are unrealistic.

45. When considered the allegation of the petitioner in this proceeding in the light of observation so made by this Court in W.P. (C) No. 130(K) of 2012 and some other relevant materials, one would find that the aforesaid allegation has hardly any substance. Being so, I have no hesitation in rejecting the above contention from the side of the petitioner.

46. I have already found that the petitioner has no locus standi to file the present proceeding, he has also not structured the present proceeding in accordance with the requirement of Rule 10(d) of the Rules, 2011, he has suppressed some material facts while presenting the present PIL and he filed this proceeding although in view of law laid down in Wallamphang Roy (supra) he was prevented from presenting the same.

47. Consequently, I am of the opinion that this proceeding needs to be dismissed on grounds aforementioned.

48. Resultantly, this proceeding is dismissed. No cost.