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**(1988) 11 MP CK 0006**

**In the Madhya Pradesh High Court**

**Case No : Miscellaneous Petition No. 248 of 1988**

P.N. Dubey

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision : 17-11-1988**

**Acts Referred:**

Constitution of India, 1950 — Article 101(4), 102, 103, 226  
Criminal Procedure Code, 1973 (CrPC) — Section 319  
Representation of the People Act, 1951 — Section 80

**Citation : AIR 1989 MP 225 : (1989) JLJ 697**

**Hon'ble Judges : Y.B. Suryavanshi, J;C.P. Sen, J**

**Bench : Division Bench**

**Advocate : R.N. Singh, for the Appellant; A.M. Mathur, General, O.P. Namdeo, Government Advocate, G.M. Chaphekar, V.S. Dabir and S.S. Jha, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

C.P. Sen, J.—This is a public interest litigation seeking action against the respondent 4 for various alleged acts of omissions, commissions and also misdeeds of corruption while he was acting as a public servant and also to disqualify him as a member of the Rajya Sabha.

2. The petitioner is a practising lawyer in the Madhya Pradesh High Court at Jabalpur. He claims that he has no political leaning but he ardently believes in condemnation of nepotism, corruption, profiteering, exploitation of helpless citizens and misuse of public money. According to him, of late there has been marked fall in moral values, increase in corruption and misuse of power by the public servants and politicians. The respondent 4 Shri Ajit Jogi was an I.A.S. Officer and has served as Collector, Sidhi, in the year 1977-78 and he came in contact with Shri Arjun Singh who later became the Chief Minister of the State. Shri Jogi helped in matters of loan recoveries and tax collections. Thereafter, he was posted as Collector, Raipur, where he was involved in rupees one crore

scandal in Kodar Dam Land Compensation Case as mentioned in article in the weekly "Current" dt. 2-1-1988 under the caption "Jogi let off the hook". The State instead of prosecuting him, prosecuted certain officers in the lower rank in Special Criminal Case Nos. 29 to 42 of 1987 under Prevention of Corruption Act which are pending before Special Judge, Raipur. Therefore, the original records of the criminal cases be requisitioned and necessary action be taken. Thereafter the respondent 4 got coveted posting as Collector, Indore, and he was involved in Palm Oil Scandal where lacs and lacs of public money had been diverted to his personal benefits. The respondent 4 has acquired assets disproportionate to his known sources of income and of his wife Smt. Renu Jogi. The Economic Offence wing of the Special Police Establishment in the State launched an investigation against the respondent 4 under Prevention of Corruption Act but the responsible police officers are hesitating for taking action against him. This finds support from news item published in Dainik Bhaskar dt. 16-1-1987 mentioning that 4.S.I.A.S. Officers of the State have become Karodpatis. One Virendra Pandit, a journalist with U.N.I. at Bhopal unearthed the facts about Palm Oil Scandal which he wrote in the Free Press Journal. Shri Jogi became a favourite of Shri Arjun Singh who secured for him Rajya Sabha ticket of the ruling party and subsequently got him elected. The irregularities of misappropriation and wastage of public money cannot be curbed unless a very deterrent action is taken against the respondent 4. The Court should, therefore, summon the complete records of the scandals and direct the State and the Union of India to conduct high level enquiry of the whole affair and bring the culprit to book. Despite criminal lapses on the part of respondent No. 4, he wilfully resigned and got himself elected to Rajya Sabha. In fact, the acceptance of his resignation was illegal in view of pendency of criminal cases against him. The petitioner has no personal ill-will or malice against any one but wants clean administration and eradication of corruption and misuse of powers by the authorities. The petitioners, therefore, prays; (i) that the investigation in Palm Oil Scandal case be completed and challan be filed u/s 5(1)(e) and 5(2) of the Prevention of Corruption Act in the Court against the respondent 4; (ii) on perusal of the records of special criminal cases pending in the Court of Special Judge, Raipur, challan be directed to be filed against the respondent 4; (iii) acceptance of resignation of respondent No. 4 be quashed as illegal and (iv) the respondents 5 and 6 viz. Chairman, Rajya Sabha and the Ministry of Parliamentary Affairs, be directed to dismember the respondent 4 from being member of the Rajya Sabha. The petition is supported by affidavit of the petitioner disclosing derivation of information from the sources of mass media as appeared in various newspapers.

3. The respondents 2 and 3 viz. the State of M.P. and its Secretary, in their return submitted that the petitioner is a mere busybody or meddlesome interloper. He is acting either for personal gain or private profit or from political motivation or other oblique consideration. The petitioner appears to be a political personal vendetta against the respondent No. 4 and Shri Arjun Singh who was then Union Minister for Communications. The allegations in the petition are wild,

baseless and bereft of details. The petition is based on newspaper report and no cogent material has been placed on record. After due investigation in Kodar Dam Land Compensation case, challans have been filed only against those persons who have been found guilty and they are being prosecuted in Special Criminal Case Nos. 29 to 42 of 1987 pending in the Court of Special Judge, Raipur. The petitioner wants this Court to act as investigation agency or as a vigilance commission and to abdicate its judicial function. No writ of quo warranto lies against respondent No. 4, he being a member of Rajya Sabha and is not holding any office under Central or State Government. It is clear that the real intention of the petitioner is to demand a fishing or roving enquiry by this Court under its extraordinary jurisdiction under Articles 226 and 227 of the Constitution. The petition as framed is, therefore, not maintainable. Article 103 of the Constitution provides that the matter of disqualification of a Member of Parliament can be decided by the President of India in accordance with the opinion of the Election Commission if he has become subject to any disqualification mentioned in Clause (1) of Article 102. No such direction can be given to the Chairman of the Rajya Sabha. The acts alleged to have been committed were in the year 1981 and 1984-85 by the respondent 4 while working as a public servant in the State of M.P., while the petition has been filed in the year 1988 and suffers from delay and laches. The acceptance of resignation of the respondent 4 is in the exclusive jurisdiction of the Government of India and the same cannot be challenged in this petition. The affidavit filed by the petitioner is defective and, therefore, the allegations in the petition need no enquiry. The petitioner has made bundle of prayers by which reliefs are sought under various enactments. There are authorities under various acts before whom relief can be sought by the petitioner on the basis of allegations in the petition. If anybody has accumulated assets disproportionate to his income, then there are authorities under various acts to be approached for that purpose and writ is not the appropriate remedy. Mala fides of the petitioner are clear by mentioning the name of wife of respondent 4 and also Shri Arjun Singh who have nothing to do with the various acts and omissions alleged against the respondent 4. In the Constitution itself, there are checks and balances and remedies under various enactments. It is absolutely false that during the tenure of the respondent 4 as Collector, Sidhi, he helped Shri Arjun Singh in matters of loan recoveries and tax collection. The articles published in newspapers are the views of their authors and sometimes written on the basis of partisan view of the matter and they cannot form basis of petition under Article 226 of the Constitution. It is a common practice these days that in the name of public interest litigation, people try to malign the image and reputation of politicians and public figures. The petition has been filed at the behest of disgruntled politicians who were unhappy at respondent 4, being given a ruling party ticket for Rajya Sabha and when got him elected. In the Criminal Procedure Code there are various provisions for proceeding against a person found guilty though not named as an accused. This Court while hearing a petition under Article 226 cannot assume the powers of a Special Judge. The petitioner has to make out a case and then ask for appropriate writ in the circumstances of

the case and not invite the jurisdiction of this Court to go into the records and make out a case for petitioner for granting him relief. The State Government always takes note of any scandal, what to say of Palm Oil Scandal, and takes action only when there is sufficient material, otherwise no civil servant will ever be able to function fearlessly and independently. The petitioner wants to convert the jurisdiction of this Court under Article 226 into a political platform so that he can malign the respondent No. 4 and Shri Arjun Singh.

4. The respondent 4 in his return submitted that this petition has been filed to tarnish his reputation. It is surprising that the petitioner has dragged the name of the respondent 4's wife who was no where else referred or connected with the so called cases. The petitioner is guilty of abuse of the process of the Court and is liable for appropriate punishment, dismissal of the petition and award of exemplary costs against him. It is denied that this respondent ever helped Shri Arjun Singh at public expense in loan or tax recoveries. It is denied the scandal mongering of partisan weekly "Current" whichever had any sanctity. This respondent has not at all been favoured because of his position but because nothing has been found against him. Regarding Palm Oil Scandal, it is this respondent who has taken action against guilty persons who were responsible for the same. Similarly, the clipping of newspaper Bhaskar is false, frivolous and fanciful. It is denied that Shri Virendra Pandit or any other journalist unearthed the facts regarding involvement of this respondent in this scandal or in any other scandals. It is denied that this respondent resigned from I.A.S. for covering any misdeeds. The allegations in the petition are wild and bereft of details. It is merely based on news-items. Challans have been filed against those found guilty in Special Criminal Cases Nos. 29 to 42 of 1987 pending in the Court of Special Judge, Raipur. Special Judge has the necessary powers to name any person as an accused if he finds that there is sufficient material against him. The petitioner desires this Court to act as Lok Ayukta to abdicate its judicial functions. Besides Article 103 which provides for disqualification of a Member of Parliament, under Article 194(3) it is the House of Parliament which has the privilege to decide about dismembership of its members on grounds other than Article 102 and the jurisdiction of the Court is excluded. The petitioner could have filed an election petition, challenging respondent 4's election to Rajya Sabha if he thought he was disqualified to be a Member. There are authorities under various acts if anybody has accumulated assets disproportionate to his known sources of income. The mala fide of the petitioner is very evident from the fact that he has not even spared the wife of this respondent.

5. The petitioner has filed the rejoinder stating that this petition has been filed with the sacred hopes of getting the guilty persons brought to book. Return filed by the respondents 2 and 3 appears to be an outburst at the instance of some hypocrite politician. It is again emphasised with all respect that the petitioner has no bent towards any political party at all. Therefore, the use of the word "busy body", meddlesome, interlopper" are uncalled for. Affidavit sworn in support of the return is false. The petitioner in support of his allegations in the petition has

produced further newspaper cutting of the daily Free Press Journal dt. 9-7-1986, Swadesh Gwalior, dt. 15-7-1986 and a copy of the pamphlet distributed at Raipur and also the complaint filed by one Anirudha Prasad Shastri of Bhopal, supported by his affidavit before Lok Ayukta for taking action against the respondent 4 for his acts of corruption and misdeeds. Some Adivasis of Raipur have also sent their representation to the higher authorities making a grievance that although the respondent 4 is not an Adivasi, and he never claimed to be so while in service, now wants to act as an Adivasi and their representative. This Court should summon the records of the enquiry in Kodam Dam Project and Palm Oil Deal. The article in Free Press Journal was under the caption "Arjun makes shady Jogi an MP overnight". It mentions that the Vigilance Commission sought permission from the Chief Minister to raid the house of the respondent No. 4 but it was put off by the Chief Minister and in the meantime the Chief Minister got Jogi elected to Rajya Sabha on ruling party ticket. The article mentions about the unaccounted wealth accumulated by the respondent 4 in Bilaspur, Raipur, Indore, Jabalpur and Damoh. It also mentions that the respondent 4's wife was a frequent visitor to a leading diamond shop at Indore and had visited the shop as many as 18 times, each time making purchases exceeding rupees one lac. The article also mentions about the involvement of the respondent No. 4 in passing of secret documents regarding the Centre for Advance Technology which appeared in American Military Journal. The article in Swadesh, Gwalior, under caption [ Matter in vernacular omitted -- Ed] repeat the facts which appeared in Free Press Journal. The article also mentions that the respondent 4 had given a false statement after his election to the Rajya Sabha that he had taken action against erring officers in the Kodar Dam Project case, while in fact the action was taken by his successor. In the complaint of Anirudh Prasad Shaslri, he alleged illegal acquisition of property by the respondent 4 and distribution of public land at throw away prices to a selected few and of his helping unscrupulous businessmen and excise contractor.

6. The Supreme Court in S.P. Gupta Vs. President of India and Others, has laid down as under : --

"Its jurisdiction can be invoked by a third party in the case of a violation of the constitutional rights of another person or determinate class of persons who, by reason of poverty, helplessness, disability or social or economic disadvantage is unable to move the Court personally for relief. The Court observed further that where the public injury was suffered by a delerminate class of persons from the breach of a public duty or from the violation of a constitutional provision of the law, any member of the public having sufficient interest can maintain an action for judicial redress for such public injury. The principle was qualified by the reservation that such petitioner should act bona fide and not for personal gain or private profit, nor moved by political or other oblique motivation. The doctrine of standing has thus been enlarged in this country to provide, where reasonably possible, access to justice To large section of people for whom, so far it has been a matter of despair."

These principles have been reiterated by the Supreme Court in *People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others*, and *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, . Again the Supreme Court in *State of Himachal Pradesh Vs. A Parent of a Student of Medical College, Simla and Others*, has observed "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 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 Supreme Court in *Chaitanya Kumar and Others Vs. State of Karnataka and Others*, has held that it is true that in a public interest litigation, those professing to be public spirited citizens cannot be encouraged to indulge in wild and reckless allegations besmirching the character of others, but, at the same time, the Court cannot close its eyes and persuade itself to uphold publicly mischievous executive actions which have been so exposed. When arbitrariness and i perversion are writ large and brought out clearly, the Court cannot shirk its duty and refuse its writ. Recently, the Supreme Court in *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, has held that public interest litigation has now come to stay. But one is led to think that it poses a threat to Courts and public alike. Such cases are now filed without any rhyme or reason. It is, therefore, necessary to lay down clear guidelines and to outline the correct parameters for entertainment of such petitions. If Courts do not restrict the free flow of such cases in the name of public interest litigation, the traditional litigation will suffer and the Courts of law, instead of dispensing justice, will have to take upon themselves administrative and executive functions.

7. The Supreme Court in *Laxmi Raj Shetty and Another Vs. State of Tamil Nadu*, has held:--

"Judicial notice cannot be taken of facts stated in a news item being in the nature of hearsay secondary evidence, unless proved by evidence aliunde. A report in a newspaper is only hearsay evidence. A newspaper is not one of the documents referred to in Section 78(2) of the Evidence Act by which an allegation of fact can be proved. The presumption of genuineness attached u/s 81 of the Evidence Act to a newspaper report cannot be treated as proved of the facts reported therein. A statement of fact contained in a newspaper is merely hearsay and therefore inadmissible in evidence in the absence of the maker of the statement appearing in Court and deposing to have perceived the fact reported."

The Supreme Court in *C.S. Rowjee and Others Vs. Andhra Pradesh State Road Transport Corporation*, held that where allegations of these nature are made, the Court must be cautious. It is true that the allegations of mala fides and improper motives are frequently made and their frequency has increased in recent times. The Court observed that it is possible to decide a matter on probabilities and inference to be drawn from all circumstances on which no direct evidence can be produced. The Court also noted that it was somewhat unfortunate that the allegations of mala fides which have no foundation in fact are made in several of

the cases which have come up before this and other Courts and it has been found that they were made merely with a view to cause prejudice or in the hope that whether they have basis or not some of it at least might stick. Recently, the Supreme Court in Shivajirao Nilangekar Patil Vs. Dr Mahesh Madhav Gosavi and Others, held that it has to be borne in mind that things are happening in public life which were never anticipated before and there are several glaring instances of misuse of power by many in authority and power. This is a phenomenon which the Courts are bound to take notice. The Supreme Court in D.L.F. Housing Construction (P) Ltd. Vs. Delhi Municipal Corpn. and Others, held :--

"In a case where the basic facts are disputed and complicated questions of law and fact depending on evidence are involved the writ Court is not the proper forum for seeking relief. The right course for the High Court in proceedings under Article 226 is to dismiss the petition on this preliminary ground without entering upon merits of the case. In the absence of firm and adequate factual foundation, it is hazardous to embark upon a determination of the points involved."

8. The petitioner is a practising Advocate, claims no political affiliation and says that he is for clean administration and for eradication of corruption, nepotism and misuse of power. The respondents have challenged his bona fides and submitted that he is a mere busy body or meddlesome interloper and has made wild, baseless allegations bereft of details. However, it has not been shown that the petition has been filed with oblique motives. The Supreme Court in Chaitanya Kumar and Others Vs. State of Karnataka and Others, has cautioned that while the petitioner cannot be encouraged to indulge in wild and reckless allegations besmirching the character of others but, at the same time, it cannot close its eyes and persuade itself to uphold publicly mischievous executive actions which have been so exposed. The allegations in the newspapers reports against the respondent No. 4 are quite serious and the petitioner claiming to be a public spirited person and having faith in rule of law, has certainly locus standi to file this petition. The petition is based on newspapers reports. But the petitioner has not filed any affidavit of the makers of those reports nor it has been shown that the petitioner himself personally made any effort to verify the allegations made against the respondent No. 4. As has been laid down by the Supreme Court in Laxmi Raj Shetty and Another Vs. State of Tamil Nadu, that judicial notice cannot be taken of the facts stated in a news-item being in the nature of hearsay evidence in the absence of the maker of the report appearing in Court and deposing to have perceived the fact reported, this Court is unable to take cognisance of the allegations made against the respondent No. 4 in newspaper reports.

9. Beside, according to us, the petitioner has chosen a wrong forum when there are statutory forums provided for granting the reliefs claimed in this petition by the petitioner. One of the reliefs claimed is that this Court should summon the records of Special Criminal Case No. 29 to 42 of 1987, pending before the Special Judge, Raipur, and after perusing the records, direct that the respondent

No. 4 be made an accused in those cases. u/s 319 of the Code of Criminal Procedure, 1974, the Special Judge has the power to make any person an accused if from evidence it appears that he has also committed an offence. Here, it has not been shown, except the newspaper reports about the involvement of the respondent 4 in the so-called one crore scandal known as Kodar Dam Land compensation case, that there is a prima facie case made out against the respondent 4 to make him an accused in these cases. It is open to the petitioner to show to the Special Judge that there is a prima facie case against the respondent No. 4 and therefore he should be prosecuted, if he so feels he can move the Public Prosecutor to bring to the notice of the Special Judge the materials on record against the respondent No. 4.

10. The other reliefs claimed are that directions be issued that the investigation against the respondent 4 in Palm Oil Scandal and regarding the respondent No. 4 possessing assets disproportionate to his known sources of income, be completed and the respondent No. 4 be brought to book after perusing the records. The petitioner wants this Court to be a forum for investigation and perform the duties of the Lok Ayukt and Up-Lokayukt under the M.P. Lokayukt Evam Up-Lokayukt Adhiniyam, 1981. This Court has neither the means nor the wherewithal to enquire into those allegations, against the respondent No. 4. The allegations against the respondent No. 4 are pertaining to the period when he was a public servant and a member of the I.A.S. and not after he became a Member of the Rajya Sabha. The Lokayukt and Up-Lokayukt have been empowered under the Adhiniyam to enquire into allegations against a public servant who (i) has abused his position as such to obtain any gain or favour to himself or to any other person or to cause undue harm to any person; (ii) was actuated in the discharge of his functions as such public servant by improper or corrupt motives; (iii) is guilty of corruption; or (iv) is in possession of pecuniary resources or properly disproportionate to his known source of income and such pecuniary resources or property is held by the public servant personally or by any member on his behalf. According to the petitioner, one Anirudh Shastri has already made a complaint to the Lokayukt supported by an affidavit against the respondent No. 4. Nothing prevents the petitioner from filing a complaint against the respondent No. 4. Before the Lokayukt regarding matters not covered by the complaint of Shastri. Here also the petitioner has not placed material showing disproportionate assets of the respondent 4 to his known sources of income except newspaper reports. Another relief claimed is for quashing of the acceptance of the resignation of the respondent No. 4 as member of I.A.S. This was in early 1986 and thereafter the respondent No. 4 has been elected to the Rajya Sabha and this petition filed after two years is highly belated. The last relief claimed is about dismembership of the respondent No. 4 from the membership of the Rajya Sabha. Rightly this relief was given up at the time of hearing since this Court cannot grant such a relief. The President under Article 103 can disqualify a member of Parliament if he has incurred any of the disqualifications under Article 102 and after obtaining opinion of the Election Commission. The Parliament can

also under Article 101(4) declare a seat vacant under certain circumstances. Besides, the petitioner could have challenged the election of the respondent No. 4 to the Rajya Sabha by filing an election petition as provided under Representation of the Peoples Act, 1951. The decision of the Supreme Court in Joint Women's Programme Vs. State of Rajasthan and Others, has no application here, where the Supreme Court directed investigation in a dowry death case as there was no proper investigation.

11. With the result, the petition fails and it is dismissed. There shall be no order as to costs.