

(2018) 05 SIK CK 0004
In the Sikkim High Court
Case No : W.P. (PIL) No. 06 of 2018

Puran Alley

APPELLANT

Vs

State of Sikkim and Ors.

RESPONDENT

Date of Decision : 24-05-2018

Acts Referred:

Citation : (2018) 05 SIK CK 0004

Hon'ble Judges : SATISH K. AGNIHOTRI C.J, BHASKAR RAJ PRADHAN

Bench : Division Bench

Advocate : B. Sharma, Bholanath Sharma

Final Decision : Dismissed

Judgement

Bhaskar Raj Pradhan, J

1. Heard. Mr. Puran Allay, a law graduate but not practicing as an Advocate has preferred the present petition claiming to be an unemployed youth

and engaged in doing social work for the upliftment of Sikkim. There are no details of the social works the Petitioner has been doing in the past. The

Petitioner claims that after his graduation when he came back to Sikkim in the year 2013 he observed that there was no overall development in the

State and the money received from the Center had not been utilized in the proper place for the upliftment of the downtrodden people of Sikkim. There

is no further clarification to this broad spectrum allegation. It is his plea that whenever he would visit remote areas he would notice poor people staying

in deplorable condition and thus was anxious to find out the exact reason as to why despite the Central Government providing funds the people of

Sikkim have not been proportionately uplifted. Besides the allegation there are no facts pleaded or proof submitted to substantiate the allegations. The

Petitioner claims that he started doing research in the matter and came across shortcomings in the functioning of the Governmental machineries. The

Petitioner claims that those shortcoming were that the funds were utilized on non productive schemes; there was no proper allocation of funds to such

schemes which would directly benefit the downtrodden; the funds were provided for religious matters; funds were not provided for construction of

roads, electricity, establishment of specialized hospitals, schools, research work, technical education, medical facilities etc. which are the basic

requirements of the people. There is not a single document filed with the Writ Petition to substantiate the statements made about the Petitioner's

perceptions of the said shortcomings.

2. It is claimed by the Petitioner that while doing research the Petitioner came across one Notice Inviting Tender (NIT) published in Sikkim Herald,

Sikkim Reporter and Dainik Mirmiray. The Petitioner therefore, sought for copy of the "NIT" under the Right to Information Act, 2005 and the

Petitioner was furnished with copy of the "NIT" published in Sikkim Herald on 25.05.2017 and 30.05.2017, Sikkim Reporter on 26.05.2017 and

Dainik Mirmiray on 26.05.2017. On a perusal of the "NIT", the Petitioner claims he was shocked to notice that the publication of the "NIT"

was done in a casual manner. The Petitioner claims that the publication of the tender has not been done in widely circulated papers or National dailies

in so far as the Petitioner's knowledge goes but also states in the same breadth that the publication shows that it was published in e-tender. It is

the perception of the Petitioner that only a handful of contractors are conversant with computer knowledge. Yet another grievance of the Petitioner is

that the tender does not disclose the nature of work, schedule of work, compliance of Sikkim Works Manual, compliance of Sikkim Financial Rules

and other related laws and other details. Mr. B. Sharma, Learned Senior Advocate for the Petitioner could not point out any such non-compliance

from the records of the case. The Petitioner states that he also received one Addendum dated 02.06.2017 as well as Corrigendum dated 05.07.2017

through the process of the Right to Information Act, 2005. The Petitioner claims that on examining the Invitation for Bids dated 23.05.2017, the

Addendum dated 02.06.2017 and Corrigendum dated 05.07.2017 the Petitioner came to learn how public money from the Government exchequer had

been embezzled. It is the case of the Petitioner that the aforesaid three documents makes it clear that the entire exercise of the tender process was undertaken to accommodate Respondent No.4 in order to give him a favouritism. It is alleged that the Respondent No.4 did not even participate in the pre-bid meeting and in spite of that his tender was accepted. It is the case of the Petitioner that there were as many as three participants in the tender bid. The Petitioner has sought to invoke the Public Interest Litigation remedy to ventilate his perceived grievance and sought the following

prayers:-

a) Issue a writ or direction for cancelling the entire tender process for execution of setting up of Sikkim State Museum, Gangtok, East Sikkim

being contract work No.03/E Tender/B.HD/2017 holding entire process of tender are carried out de hors the existing laws of the land.

b) A writ/order or direction for quashing of the entire tender process as the entire tender process is actuated by malafide and due favouritism meted

out to respondent No.4.

c) And after hearing the parties:

i. To kindly quash/cancel the entire Tender process and fund earmarked for this Tender maybe utilised for other project to meet the basic need of the

people and in alternative, kindly quash, cancel the entire Tender process, if it is found that Respondent No.4 is not competent to execute the work.

And to cancel the whole process of contract if other bidders are not competent to execute the work. If Hon'ble Court find that this project is also

in the Public Interest.

ii. Kindly pass order/orders restraining the Respondent No.2 to issue to Work Order in favour of Respondent No.4.

iii. Kindly pass any order or orders if found necessary.

3. Mr. B. Sharma would submit that although the Invitation for Bids dated 23.05.2017 required that the contractors who have experience in the

construction of museum/artefacts and consider themselves capable to undertake execution of the project could download the details and bidding

documents, Annexure-P11 dated 17.06.2016 would show that the contractor who has been given the contract i.e. Respondent No.4 did not have the

requisite qualification. We have examined Annexure-P11 which is a letter addressed to the Chief Engineer dated 17.06.2017 written by M/s Adland

Publicity Private Ltd. stating therein that M/s Adland Publicity Private Ltd. is an old associate agency of Shri Sonam Topden Bhutia (Class I-A Government Contractor) the Respondent No.4 herein. It is also stated in the said communication that the said M/s Adland Publicity Private Ltd. and the Respondent No.4 have been working as a joint venture since 2008. As an annexure thereto details of various dimensional creative works & designs executed by the said M/s Adland Publicity Private Ltd. were also furnished. Various certificates issued by various authorities have been attached thereto providing information regarding various works undertaken by the said M/s Adland Publicity Private Ltd. The Addendum to the NIT filed by the Petitioner reflect that preference could be given to such agencies having valid agreement with firms/persons who have done museum works at National/State Level. The Corrigendum merely reschedules the dates for bid submission and opening of bids to 28.07.2017 and 01.08.2017 respectively.

4. Mr. B. Sharma, on being asked, could not point out a single document from the records filed by the Petitioner which would reflect that joint venture was not permitted contrary to the Addendum. It is the case of the Petitioner that there were three bidders in the tender process. The two bidders whose bids were rejected are not before the Court or aggrieved. The Writ Petition does not disclose whether the documents filed with it are the entire documents before the Respondents. A perusal of the documents filed by the Petitioner does not disclose any "favouritism" as alleged. Making wide ranging allegations without any substance is itself an act which cannot be entertained and ought to be discouraged. The Petitioner's allegation that a perusal of the Invitation for Bids, the Addendum and the Corrigendum thereto demonstrate that the Department has left no stone unturned to accommodate Respondent No.4 remains an unsubstantiated but damning allegation made without any basis or coherence as even a searching examination of those documents it could not substantiate the said allegation. In fact, Mr. B. Sharma could also not point it out to us. There is nothing brought out in the Writ Petition which discloses that Respondent No.4 did not have the necessary prerequisites to qualify in the bid. Roving inquiry merely on the basis of unsubstantiated allegations cannot be permitted to ventilate a presumed grievance of the Petitioner who has failed to

demonstrate public interest element or point out a single material to establish even prima facie any act of favouritism towards the Respondent No.4.

Public Interest Litigation (PIL) remedy cannot be permitted to be used in the manner sought for. Admittedly the Invitation for bids was dated

23.05.2017 and the date of opening of Tender documents was 01.08.2017. The Writ Petition has been preferred by the Petitioner on 18.05.2018 after

nearly a year. There is no indication in the petition as to the present stage of the contract. The Petitioner seeks an order to quash the present tender

process and for a direction to utilise the funds earmarked for this project for other projects to meet the basic need of the people. The tender is for

setting up of Sikkim State Museum at Gangtok, East Sikkim. There is not a single reason cited as to why or how setting up of a museum is not in

public interest. It is a policy decision of the Respondent to set up this museum. Such policies are not open to Judicial review except when it violates

constitutional or statutory provisions which grounds are not available before us in the present petition. The executive is tasked with the primary

responsibility for formulating Governmental policies and to carry out its execution and the Writ Court cannot interfere unless the policy is opposed to

constitutional and statutory provisions or suffers from manifest arbitrariness, unreasonableness or absurdity. Interference by Courts on mere allegation

smelling foul play at every level of administration is unhealthy and bound to make governance impossible. A public spirited individual must not only

make such allegations that the act of the Government smacks of arbitrariness, unreasonableness or illegality but must necessarily substantiate the said

allegations. Unsubstantiated allegations adversely affect the opposite party and are evidently unfair. There must be a real and genuine public interest

involved in the litigation and not only an adventure of a law graduate, who in spite of a professional degree chooses not to practice law and claims to

be unemployed youth instead. Public Interest Litigation remedy cannot be resorted to unless it is bonafide. The Petitioner's evidently irrational

perception that setting up of a museum is non-productive cannot invoke the jurisdiction of this Court to go roving into the process of the tender. The

expression "Public Interest Litigation" means a legal action in a Court of law for the enforcement of public interest or general interest in which

the public or a class of the community has pecuniary interest or some interest by which their legal rights or liabilities are affected. The Supreme Court

in re: Peoples Union for Democratic Rights & others vs. Union of India & Ors.¹ defined “Public Interest Litigation” and observed:

“Public Interest Litigation is a cooperative or collaborative effort by the Petitioner, the State or public authority and the Judiciary to secure

observance of constitutional or basic human rights, benefits and privileges upon poor, downtrodden and vulnerable sections of the society.”

5. We are afraid we cannot agree with the perception of the Petitioner that setting up of a State museum is not in public interest and that the funds

should be diverted for other public purposes.

6. In the circumstances the Writ Petition is dismissed in limine.

7. No orders as to costs.