

**(2007) 01 PAT CK 0169**

**In the Patna High Court**

**Case No :** CWJC No's. 1160 of 2006 with 10868 of 2005

Rajendra Mishra

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

**Date of Decision :** 18-01-2007

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Penal Code, 1860 (IPC) — Section 34, 409

**Citation :** (2007) 2 PLJR 773

**Hon'ble Judges :** J.N. Bhatt, C.J;S.K. Sinha, J

**Bench :** Division Bench

**Advocate :** Rajendra Mishra in-person, for the Appellant; Rajesh Kr. Singh and Vikas Kumar and Mr. Lalan Kumar for the Respondent No. 3, for the Respondent

**Final Decision :** Dismissed

## Judgement

1. These two petitions have been brought under the banner of the Public Interest Litigation under Article 226 of the Constitution of India raising the grievance in respect of two different officers of the State Government but the grievance against them is the same and, therefore, upon request these petitions are being taken up together at the admission stage. After having heard the learned Counsel appearing for the parties and considering the facts and circumstances, we are of the opinion that without any material or efforts on the part of the petitioner to assist the Court, it does not appear to be a fit case for taking up under the banner of the Public Interest Litigation.

2. The Public Interest Litigation concept and philosophy has been evolved in this country for certain classes of people, who are unable to find access to the system of justice. There should not be an impression in the mind of anybody that the Public Interest Litigation should be used as and when one desires to bring it to the Court and leaves it to the Court without making any efforts or endeavors for the redressal of the grievance voiced from the record and the testimonials placed on record.

3. We are unable to find that the party in person has made sincere and serious efforts to get the grievance redressed through the proper channel or through the proper authority.

4. The Public Interest Litigation is not a right of anybody. It is a matter of discretion of the Court and if the Court finds that there is an appropriate and fit case, the Court may take it up in the larger public interest under the banner of the Public interest Litigation.

5. In view of the nature of relief, the nature of material and lack of the supporting materials on the record, we are of the opinion that no action should be taken in the matter under the banner of the Public Interest Litigation. It will be open for the party to avail and resort to other efficacious available alternative redressal including the private litigation.

6. In one of these petitions, namely, CWJC No. 10868 of 2005, the counter affidavit on behalf of the respondent no. 3 Sri V. Jaishankar, Secretary, Water Resources Department, Government of Bihar, Patna, has been filed. In para 4 of the same, it has been specifically averred and stated that the petitioner has filed this Public Interest Litigation purely out of personal vendetta against the respondent no. 3 with sole intention to tarnish unblemished image of the respondent no. 3 through adverse publicity, which is evident from the fact that respondent no. 3 has been impleaded by name and not by designation and when other two parties have been impleaded by designation.

7. It is further averred in para-6 of the said counter affidavit that the petitioner Rajendra Mishra, who is a practicing Advocate now and was earlier working as a District Prosecution Officer at Kishanganj, has not come with clean hands. It is not mentioned by him in his writ petition till recently that he was in Government employment in the rank and status of the District Prosecution Officer under the Directorate of Prosecution, Department of Home, Government of Bihar, and while in service he was placed under suspension and disciplinary proceedings were initiated against him under the relevant Rules for major penalty by the Government of Bihar after serious allegations of financial irregularities and insubordination against the petitioner had been, prima facie, established. It is further stated in the said paragraph that the petitioner had retired from the service on 31.12.04 while under suspension since the disciplinary proceedings were continuing.

8. It will be still very interesting to quote the averments made in para-7 of the said counter affidavit with a view to highlight the exact nature and narration of the material allegation, which reads here-as-under:

"That during the period 2001-2003 the answering respondent had been holding additional charge of Director General, Prosecution, in the Home Department, Government of Bihar, while the petitioner was working as District Prosecution Officer in the District of Kishanganj, having been posted there since January, 1998. Between the years, 1999 and 2002 several allegations of financial

irregularities and other willful acts of omission and commission were received against him from different sources including the learned Sub-Divisional Judicial Magistrate of Kishanganj and a Member of the Bar."

9. Our attention is, also, invited to the averments made in para-10, which are, also, emphasized on behalf of the Government by its Counsel. We, therefore, think it appropriate to re-produce para-10, which reads here-as-under:

"That the answering respondent studied the files in depth and found that the allegations were of very serious nature, such as, even though arrested on 7.9.1999 in Criminal Contempt of Court Proceedings Case No. 11/99 and kept in judicial custody at Beur Jail on 8th and 9th September, 1999 the petitioner indulged in cheating and criminal breach of trust by fraudulently withdrawing salary for the said period misusing his position as self drawing and disbursing officer; frequently absenting himself for long periods and failing to appear in the criminal proceedings in the courts but drawing salary for these periods; falsely claiming compensatory leave for unauthorized leave; and using and displaying undignified and contemptuous behavior in courts etc. Hence agreeing with the recommendations of the District Magistrates the answering respondent concurred with the proposals in the file and recommended to the Government of Bihar in the Home Department vide letter no. 5 dated 7.1.2003 of the Directorate of Prosecution, Bihar, that the petitioner be placed under suspension and departmental proceedings be instituted against him for major penalty.

10. Let it be mentioned that the petitioner has filed a supplementary affidavit in reply to the counter affidavit submitted by the respondent no. 3, and in so far as the aforesaid two paragraphs are concerned, the reply is in para-5 of his affidavit. It is stated in the beginning of para-5 in rejoinder that in respect of paras 6 to 15 of the counter affidavit, the petitioner has to say that the facts stated in those paras are totally irrelevant for the purpose of this case and thereafter there are narrations of some other facts.

11. Relevancy, admissibility and denial are three different connotations under the law. However, with a view to see that the complete justice is done in the matter, we deem it expedient to quote the averments made in para-5, which reads here asunder:

"That in respect of para nos. 6 to 15 of the above said Counter Affidavit the petitioner has to say that the facts stated in those paras are totally irrelevant for the purpose of this case. However, in short reply to it is being given. The petitioner was asked for to submit an explanation on the basis of a few reports sent by the then D.M., Kishanganj. The petitioner had submitted his explanation mentioning therein, besides other facts (1) that the P.A. of the D.M. namely Sri Chandra Shekhar Prasad Chaudhary had demanded a bribe at the rate of Rs. 1000.00 per month which was refused by the petitioner due to which the D.M. of Kishanganj was displeased, (2) the petitioner had sent leveling some allegation of corruption against some Judicial Magistrate including the then District Judge,

namely, Sri Alakh Dubey. (Subsequently, those Judicial Magistrate said Sri Alakh Dubey, the then District Judge was discharged., Sri Hira Pandey the then S.D.J.M., Sri A.K. Modi and Sri V.S. Pandey the then Judicial Magistrates have been dismissed from their service) due to this they and some lawyers who were engaged in bribery work were acting against the petitioner to which the said D.M. and his said PA. were attached and had formed a league. The above said Judicial Officer and the District Judge had managed to send report against the petitioner in retaliation addressed to Hon"ble High Court for the initiation of a contempt proceeding. The Hon"ble High Court was pleased to direct the petitioner to submit a show cause as to why a contempt of court proceeding be not initiated against him. As the petitioner was not directed to appear personally so that the petitioner sent the above said show cause through a registered post. The above said Registered post was got disappeared due to which non-bailable W/A was issued against the petitioner, in compliance of which he had to remain in custody for two days. After it was shown to Hon"ble Court that show cause was sent, it was dropped without being initiated. The petitioner had drawn his pay for the above said period for two reasons; (1) the petitioner was on C.L during the above said period and (2) W/A was issued by the Hon"ble High Court not due to the petitioner's personal fault hence no permission of any authority was required for its withdrawal, (3) the petitioner had cited some instances of corruption attaching therewith some relevant papers against the then D.M., Kishanganj and making prayer to get those matters enquired, addressed to Directorate of Prosecution i.e., the Respondent.

The above said Respondent, had dishonestly with an intention to protect the said D.M. from enquiry being held against him, sent the above said explanation sent by the petitioner for opinion to the same D.M. against whom the petitioner had leveled the above said allegation, above said respondent had acted illegally due to which he became liable to be prosecuted u/s 409/34 I.P.C. and 13 of the Prevention of Corruption Act. Describing one of the facts and circumstances in detail the petitioner has filed one CWJC No 9496 of 2005 in respect of defalcation of Rs. 20 lacs and fifty eighty thousand by D.M., Kishanganj in conspiracy with others in which Hon"ble Court was pleased to direct the Respondent to submit a Counter Affidavit after getting an enquiry report from the D.M., Kishanganj. Describing the other facts and circumstances in detail the petitioner has filed one CWJC No. 12592/2005 attaching therewith some Annexures and praying therein to get the matter investigated by C.B.I. which was unfortunately dismissed at the very preliminary stage on the point of the selection of its subject. The petitioner has filed a Civil Review Petition on 18.10.2005 against the above said order of dismissal. During the hearing on the point of Admission of CWJC No. 10851/2005 and 10868/2005 the Hon"ble Court was pleased to direct the petitioner to describe the facts in detail, which necessitated the petitioner to submit the list of all the cases filed by the petitioner and to make prayer that all the cases be called for and be heard together. The above said D.M. did not challenge the allegation leveled against him but he only said--JILLA PADAADHIKAARI

KISHANGANJ SAHIT ANYA PRASHAASNIK PADAADHIKAARIYON KE BIRUDH MAANGARHANT AWAM BE BUNIYAAD AAROP SANSUCHIT KARNAA UNKI GALAT MANSHAA AWAM MANMAANI KO UJAAGAR KARTA HAI. ITNAA HI NAHIN SRI MISHRA DWAARA NYAAYIK DANDAADHIKAARIYON KE BIRUDH BHI BHRASHTAACHAAR KA AAROP SANSUCHIT KIYAA GAYAA HAI AUR AISI STITHI MEIN YAH TAY KAR PANAA SAMBHAW PRATIT NAHIN HOTAA KI BASTUTAH NYAYIK DANDHAADHIKAARIYONE KE BIRUDH SRI MISHRA KAA AAROP KAHAAAN TAK SAHI HAI. ATAH IS SANDARVA MEIN SWATANTRA RUP SE JAANCH KARAAKAR BASTU STITHI KI JAANKAARI PRAPT KI JAA SAKTI HAI". In this respect even the said D.M. was to some extent fair. But the Respondent as a very Nyay Priya and strict man vide his office memo no. 5/ 4.3.2001 Go dt. 7.1.2003 had written "SRI RAJENDRA MISHRA KE NIRANTAR ANUSHAASANHIN, AMARYAADIT, SWECHCHAACHAAR, AACHRAN KO DEKHTE HUE INHEIN NILAMBIT KAR BRIHAT DAND KE LIVE BIBHAAGIY KAARYWAAHI PRAARAMBH KARNE KI ANUSHANSAA KI JAATI HAI."

12. After having seen the aforesaid averments, it leaves no any manner of doubt, in our mind, that the petitions filed, could no\* he said to be bona fide. The personal vendetta for projection of the professionalism or any attempt to politicize the Public Interest Litigation concept is always deprecated and there are number of decisions and various pronouncements of the Hon"ble Apex Court. We would like to refer the latest judgment of the Hon"ble Apex Court rendered in the case of Neetu vs. State of Punjab and Others in Appeal (Civil) No. 95 of 2007, on 8.1.2007 on this point.

13. Let it be emphatically highlighted that the Court shall always be in happy when the process of the Court, much less, the process of pious Public Interest Litigation philosophy is not misused or abused by anyone and, more so, when it is done by the Officer of the Court, the Advocate, such an attempt not only pollutes the stream of Public Interest Litigation but also creates an unhealthy syndrome for the system, to which the legal fraternity is one of the important segments. Anybody including the petitioner should desist from doing so. In the end, we dismiss both the Public Interest Litigations at the threshold and do not award any cost with pious hope that such an attempt will be avoided in future despite the fact that we are convinced that this is a fit and appropriate case for imposing heavy exemplary cost. Notice is discharged.