
(2005) 12 GAU CK 0010
In the Gauhati High Court
Case No : P.I.L. No. 62 of 2005

Rajesh Kumar Bhatra

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 02-12-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 142, 21, 226, 32

Citation : (2006) GLT 691 Supp

Hon'ble Judges : D. Biswas, Acting C.J.; B.P. Katakey, J

Bench : Division Bench

Advocate : G. Uzir, S.K. Medhi, R. Baruah, S. Kalita and S.M. Baruah, for the Appellant; B. Goyal and B.J. Talukdar, for the Respondent

Judgement

B.P. Katakey, J.—The Petitioner, who is a Practicing Advocate of the City of Guwahati has filed this Public Interest Litigation (for short "PEL") praying for directing the Respondents not to act upon the order dated 1.9.05 issued by the Commissioner of Excise, Assam, whereby use and sale of foreign liquor in bottles 180 ml. and 375 size ml has been replaced by the bottles of 200 ml and 500 ml in size respectively.

2. We have heard Mr. G. Uzir, learned Counsel appearing on behalf of the Petitioner and Mrs. B. Goyal, learned State counsel appearing on behalf of the Respondents.

3. Mr. Uzir, learned Counsel for the Petitioner has submitted that the Petitioner has challenged the aforesaid notification dated 1.9.05 issued by the Commissioner of Excise, Govt. of Assam only relating to the change of size of IMFL bottles from 180 ml and 375 ml to 200 ml and 500 ml respectively as it will encourage more consumption of alcohol by the consuming public and would likely to cause loss of revenue by the State Government, as the price of IMFL in the neighbouring states are lower than the price prevailing in the State of Assam. Mr. Uzir, therefore, submits that this Court may entertain the present PIL and issue necessary direction to the Respondent-authorities to withdraw the said

notification dated 1.9.05. Mr. Uzir, during the course of argument has also submitted that in fact the Govt. of Assam in Excise Department has taken a decision to defer the decision of change of such bottles until further orders, which has been communicated by the Deputy Secretary to the Govt. of Assam, Excise Department to the Commissioner of Excise vide communication dated 4.10.05.

4. Mrs. B. Goyal, learned State counsel appearing on behalf of the Respondents has submitted that the present PIL is not maintainable as by the present petition, the Petitioner is not espousing the cause of people who is in a disadvantaged position or for their welfare. The further submission of Mrs. Goyal is that as the decision to change the size of IMFL, bottles is not an issue of public importance and not violative of any fundamental rights of any citizen and the Petitioner has failed to indicate any failure on the part of the State authorities to discharge any constitutional duties and functions or violation of any constitutional or legal rights of any citizen, the present petition deserves to be dismissed at the threshold. It has further been contended that the Petitioner has miserably failed to demonstrate as to how any legal, constitutional or fundamental rights of any section of the citizen has been violated by the impugned order dated 1.9.05. The learned State counsel has further submitted that the Petitioner has failed to give any particulars in supports of his contention that because of the change of size of the bottles of IMFL, there is likelihood of loss of Government revenue. According to the learned Counsel, this Court will not make any roving enquiry while entertaining a PIL. The learned Counsel therefore prays that the petition deserves to be dismissed.

5. We have considered the submissions of the learned Counsel for the parties and also perused the pleadings in the petition.

6. For the sake of convenience we reproduced below the relevant paragraphs and the averments made by the Petitioner in the petition to reflect his grievance.

4. While selling IMFL by the retailers they have to procure the same from the office of manufacturers of various brands of IMFL with the standard norms fixed by the Government of India in quality and the size of the bottles. At present, as per all India standard norms there are 180 ml, 375 ml, 500 ml, 750 ml and 1000 ml size of bottles of IMFL are prevailing in India. The idea of introducing 180 ml and 375 ml size of bottles of IMFL was to accommodate the people of very lower income group, mainly the labourer class, who normally used to drink liquor after a hard day's work but of a particular limit within his limited income. As such, in the market the highest selling bottles of IMFL are 180 ml and 375 ml. That apart, since those bottles are easy to carry the common people gives a preference to those bottles. So far sale of country liquor in country liquor mahals a person has to bring a bottle or pot. Of let, the State Excise Department also issues directives to the country liquor mahals to sale country liquor in sealed bottles to ensure the standard of purity.

5. No doubt the State Government is earning good revenue through Excise Department in selling of IMFL and country liquor but there are other effects also and as such, it is very much required to restrict the number of IMFL retail outlet and country liquor mahal. The State of Nagaland and Mizoram have already witnessed the adverse effect of mushroom growth of IMFL retails and as a result Mothers Organization of both the States compelled both the State Governments to declare both the States as "Dry State" and the Petitioner is afraid of cropping up such a situation in near future in the State of Assam also if the number of IMFL retail outlet and country liquor mahals are not restricted.

6. In spite of licensing a huge number of IMFL retail outlets in Assam and settlement of 267 numbers of country liquor mahal in upper Assam districts by the State Excise Department and inspite of earning good revenue by the State through the State Excise Department now, in the name of earning more revenue, the State Excise Department, has introduced new sizes bottles of 200 ml and 500 ml replacing the 180 ml and 375 ml size bottles of IMFL in Assam. Meaning thereby, from now onwards, the people, who were accustomed with 180 ml and 375 ml size IMFL bottles as per need and budget, have to, rather compelled to drink more and pay more. Such introduction of new size bottles of 200 ml and 500 ml of IMFL by the State Excise Department replacing the 180 ml and 375 ml size bottles was made vide order No. III-35/96-97/4888 dated 1.9.2005 issued by the Commissioner of Excise, Assam.

7. The Petitioner, who is a citizen of India and a permanent resident of Guwahati, is a practicing lawyer of Guwahati. The Petitioner is also actively associated with socio-economic activities and already taken part in many seminars. The Petitioner, made a survey amongst the cross section of people, who normally drinks and why. As per the survey, the Petitioner identified two prime categories of people, namely casual drinker and regular drinkers. In the first category it is seen that there are many person who drinks occasionally, mostly in a party, in a bar and sometime meeting with an old friend. In the first category, the Petitioner has not found any people from labour class and very low-income group. In the second category, the Petitioner found that about 70% of people comes from labour class and very low income group. Rest 30% of people comes from various cross Sections of people, mostly aged between 40 years to 60 years, who are in high profile job or good businessman and professional. It is also seen from such survey that the first group of people and 3% of second category of people normally purchase 750 ml size bottles of IMFL. But, the 70% of people, who are habitual drinker, purchase mostly 180 ml size bottles of IMFL and if not available, purchase 375 ml size bottle as per their need and budget. That apart, because of the size of the bottles of 180 ml and 375 ml it is very easy to carry, according to the said 75% of labour class people. Because of good sale of 180 ml and 375 ml size bottles in Assam the State Government is earning more than 50% of total revenue through State Excise Department. As such, replacing the 180 ml and 375 ml bottles of IMFL by 200 ml and 500 ml size bottles by the State Excise Department, the Petitioner feels that, there is every likelihood of decrease of the

revenue collected through the State Excise Department. The Petitioner further states that the 200 ml and 500 ml size bottles of IMFL are not in conformity with all India standard of IMFL bottles prevailing throughout the country. As such, the Petitioner feels that the decision of the State Excise Department replacing 180 ml and 375 ml size bottles of IMFL by 200 ml and 500 ml size IMFL bottles was not in public interest as such, the Petitioner begs to bring this issue before this Hon'ble court in public interest, more particularly in the interest of State Revenue.

8. The Petitioner humbly submits that since 180 ml and 375 ml size IMFL bottles are very popular amongst the labour class and in market as such abolition of those two size bottles of IMFL may open another market of spurious liquor in Assam. It is further submitted that the price of IMFL in our neighbouring States, like Meghalaya and Arunachal Pradesh are cheap in comparison with Assam resulting which the State of Assam is loosing some portion of revenue. As such, if the aforesaid two sizes of 180 ml and 375 ml IMFL bottles are allowed to replace with 200 ml and 500 ml size bottles naturally, the labour class and low-income group people will switch over to the other market, wherein 180 ml and 375 ml IMFL bottles are available resulting which the State Government may loose a considerable amount of revenue because of aforesaid replacement of bottles. As such, the Petitioner humbly submits that the decision of State Excise Department in the matter of replacing the 180 ml and 375 ml bottles by 200 ml and 500 ml bottles vide order dated 1.9.2005 (Annexure-A) was not made in public interest.

7. The Petitioner in the said petition has prayed for the following reliefs:

(a) Issue rule calling upon the Respondents to show cause as to why, after considering the facts and circumstances of the matter, a writ or mandamus should not be issued commanding them not to act upon the order of replacing 180 ml and 375 ml IMFL bottles by 200 ml and 500 ml IMFL bottles issued vide No. III-25/96-97/4888 dated 1.9.05 by the Commissioner of Excise, Assam (Annexure-A).

(b) Issue rule in the nature of certiorari commanding the Respondents to transmit and certify to this Hon'ble court all records relating to issuance of the order No. III-25/96-97/4888 dated 1.9.05 by the Commissioner of Excise, Assam (Annexure-A) so that conscionable justice may be done by setting aside the aforesaid order dated 1.9.05 (Annexure-A);

(c) In the interim, it is prayed that, the operation of the order No. III-25/96-97/4888 dated 1.9.05 passed by the Commissioner of Excise, Assam (Annexure-A) be stayed till disposal of the writ petition; and or

(d) Pass such other or further order or orders in public interest as your Lordships may deem fit and proper.

8. Let us first discuss the law laid down by the Apex Court on the question of entertainment of PIL.

(A) The Apex Court in *BALCO Employees Union (Regd.) Vs. Union of India and Others*, has held that PIL was essentially meant to protect basic human rights of the weak and the disadvantaged and was a procedure which was innovated where a public-spirited person files a petition in effect on behalf of such persons who on account of poverty, helpless or economic and social disabilities could not approach the court for relief.

It has further been held that Public Interest Litigation is to be entertained where there is an element of violation of Article 21 or Human rights or where the litigation has been initiated for the benefit of the poor, ignorant or who are in socially or economically disadvantageous position. The relevant portion of the said judgment is quoted below:

77. Public Interest Litigation, or PIL as it is more commonly known, entered the Indian judicial process in 1970. It will not be incorrect to say that it is primarily the Judges who have innovated this type of litigation as there was a dire need for it. At that stage, it was intended to vindicate public interest where fundamental and other rights of the people who were poor, ignorant or in socially or economically disadvantageous position and were unable to seek legal redress were required to be espoused, PIL was not meant to be adversarial in nature and was to be a cooperative and collaborative effort of the parties and the court so as to secure justice for the poor and the weaker sections of the community who were not in a position to protect their own interests. Public interest litigation was intended to mean nothing more than what words themselves said viz "litigation" in the interest of the public.

78. While PIL initially was invoked mostly in cases connected with the relief to the people and the weaker sections of the society and in areas where there was violation of human rights under Article 21, but with the passage of time, petitions have been entertained in other spheres. Prof. S.B. Sathe has summarized the extent of the jurisdiction which has now been exercised in the following words:

PIL may, therefore, be described as satisfying one or more of the following parameters. These are not exclusive but merely descriptive:

Where the concerns underlying a petition are not individualist but are shared widely by a large number of people (bonded labour, undertrial prisoners, prison inmates).

Where the affected persons belong to the disadvantaged sections of society (women, children, bonded labour, unorganized labour etc.)

Where judicial law making is necessary to avoid exploitation (inter-country adoption, the education of the children of the prostitutes).

Where judicial intervention is necessary for the protection of the sanctity of democratic institutions (independence of the judiciary, existence of grievances redressal forums).

Where administrative decisions related to development are harmful to the environment and jeopardize people's right to natural resources such as air or water.

79. There is, in recent years, a feeling which is not without any foundation that public interest litigation is now tending to become publicity interest litigation or private interest and has a tendency to be counterproductive.

80. PIL is not a pill or a panacea for all wrongs. It was essentially meant to protect basic human rights of the weak and the disadvantaged and was a procedure which was innovated where a public-spirited person filed a petition in effect on behalf of such persons who on account of poverty, helplessness or economic and social disabilities could not approach the court for relief. There have been, in recent times, increasingly instances of abuse of PIL. Therefore, there is a need to re-emphasize the parameters within which PIL can be resorted to by a Petitioner and entertained by the court. This aspect has come up for consideration before this Court and all we need to do is to recapitulate and re-emphasize the same.

....

88. It will be seen that whenever the Court has interfered and given directions while entertaining PIL it has mainly been where there has been an element of violation of Article 21 or of human rights or where the litigation has been initiated for the benefit of the poor and the underprivileged who are unable to come to court due to some disadvantage. In those cases also it is the legal rights which are secured by the courts. We may, however, add that public interest litigation was not meant to be a weapon to challenge the financial or economic decisions which are taken by the Government in exercise of their administrative power. No doubt a person personally aggrieved by any such decision, which he regards as illegal, can impugn the same in a court of law, but, a public interest litigation at the behest of a stranger ought not to be entertained. Such a litigation cannot per se be on behalf of the poor and the downtrodden, unless the court is satisfied that there has been violation of Article 21 and the persons adversely affected are unable to approach the court.

....

97. Judicial interference by way of PIL is available if there is injury to public because of dereliction of constitutional or statutory obligations on the part of the Government. Here it is not so and in the sphere of economic policy or reform the court is not the appropriate forum. Every matter of public interest or curiosity cannot be the subject matter of PIL. Courts are not intended to and nor should they conduct the administration of the country. Courts will interfere only if there is a clear violation of constitutional or statutory provisions or non-compliance by the State with its constitutional or statutory duties. None of these contingencies arise in this present case.

(B) The Apex Court in *Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others*, in Para 50 has summarized broad principles evolved by the Court for the purpose of entertaining the Public Interest Litigation. Para 50 of the said judgment is quoted below:

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 v. Union of India*, *People's Union for Democratic Rights v. Union of India*, *Bandhua Mukti Morcha v. Union of India* and *Janata Dal v. H.S. Chowdhary*.

(ii). Issues of public importance, enforcement of fundamental rights of a large number of the public vis-a-vis the constitutional duties and functions of the State, if raised, the Court treats a letter or a telegram as a public interest litigation upon relaxing procedural laws as also the law relating to pleadings see *Charles Sobraj v. Supdt. Central Jail and Hussainara Khatoon (i) v. Home Secy. State of Bihar*.

(iii). Whenever injustice is meted out to a large number of people, the Court will not hesitate in stepping in, Articles 14 and 21 of the Constitution of India as well as the International Conventions on Human Rights provide for reasonable and fair trial.

In *Maneka Sanjay Gandhi v. Rani Jethmalani* it was held: (SCC p. 169, para 2).

2. Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment, is necessitous if the court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the Petitioner's grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weight the circumstances. see also *Dwarka Prasad Agarwal v. B.D. Agarwal*.

(iv) The common rule of locus standi is relaxed so as to enable the court to look into 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 Corporation Kamgar Union (Regd.) v. Union of India*, *S.P. Gupta, Peoples 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*).

(vi) Although procedural laws apply to PIL cases but the question as to whether the principles of *res judicata* or principles analogous thereto would apply depends on the nature of the petition as also facts and circumstances of the case. See *Rural Litigation and Entitlement Kendra v. State of U.P.* and *Forward Construction Co. v. Prabhat Mandal (Regd.)*

(vii) The dispute between two warring groups purely in the realm of private law would not be allowed to be agitated as a public interest litigation. See *Ramsharan Autyanuprasi v. Union of India*.

(viii) However, in an appropriate case, although the Petitioner might have moved a court in his private interest and for redressal personal grievances, the Court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice. See *Shivajirao Nilangekar Patil v. Dr. Mahesh Madhav Gosavi*.

(ix) The Court in special situations may appoint a Commission, or other bodies for the purpose of investigating into the allegations and finding out facts. It may also direct management of a public institution taken over by such Committee. See *Bandhua Mukti Morcha, Rakesh Chandra Narayan v. State of Bihar* and *A.P. Pollution Control Board v. Prof. M.V. Nayudu*.

In *Sachidanand Pandey v. State of W.B.*, this Court held: (SCC 334 61).

61. It is only when courts are apprised of gross violation of fundamental rights by a group or a class action on when basic human rights are invaded or when there are complains 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.

In *Janata Dal v. H.S. Chowdhary* this opined: (SCC 348, para 109).

109. It is thus clear that only a person acting bonafide and having sufficient interest in the proceedings of PIL will alone have a *locus standi* and can approach

the court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the court for vindicating any personal grievance, deserves rejection at the threshold.

The Court will not ordinarily transgress into a policy. It shall also take utmost care not to transgress its jurisdiction while purporting to protect the rights of the people from being violated.

In *Narmada Bachao Andolan v. Union of India* it was held: (SCC 762 , para 229 & 232).

229. It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policymaking process and the courts are ill-equipped to adjudicate on a policy decision so undertaken. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution. Even then any challenge to such a policy decision must be before the execution of the project is undertaken. Any delay in the executions of the project means overrun in costs and the decision to undertake a project, if challenged after its execution has commenced, should be thrown out at the very threshold on the ground of laches if the Petitioner had the knowledge of such a decision and could have approached the court at that time. Just because a petition is termed as a PIL does not mean that ordinary principles applicable to litigation will not apply. Laches is one of them.

232. While protecting the rights of the people from being violated in any manner utmost care has to be taken that the court does not transgress its jurisdiction. There is, in our constitutional framework a fairly clear demarcation of powers. The court has come down heavily whenever the executive has sought to impinge upon the court's jurisdiction.

(x) The court would ordinarily not step out of the known areas of judicial review. The High Courts although may pass an order for doing complete justice to the parties, they do not have a power akin to Article 142 of the Constitution of India.

(xi) Ordinarily, the High Court should not entertain a writ petition by way of public interest litigation questioning the constitutionality or validity of a statute or a statutory rule.

(C) In a recent judgment in *R and M Trust v. Koramangala Residents Vigilance Group and Ors.* reported in AIR 2005 SCW 736 , the Apex Court has also reiterated the said principles enunciated by the Apex Court in its various earlier judgments and held that the court should not exercise the jurisdiction of entertaining the PIL lightly but should exercise the said jurisdiction in a very rare

and few cases involving public interest of large number of people who cannot afford litigation and are made to suffer at the hands of the authorities.

9. In the backdrop of the law laid down by the Apex Court, as discussed above, let us deal with the present petition. It appears from the averments made by the Petitioner in the petition as quoted above, that the PIL has been filed by him challenging the Govt. decision to change the size of liquor bottles on the apprehension that some public will be compelled to consume more liquor because of increase in the size of bottles and such action would likely to cause loss of Government revenue, as the smaller sizes are available in the neighbouring States at a cheaper rate. The Petitioner has nowhere stated as to how any legal constitutional or fundamental rights of any section of the society, not to speak of downtrodden, deprived, poor or illiterate section, has been violated by the impugned decision of the Govt. of Assam dated 1.9.05. The petition is also silent how the writ Petitioner is interested in the welfare of the people who is in a disadvantageous position and thus not in a position to knock the door of the Court. The Petitioner has also failed to demonstrate what constitutional duties and functions, the State has failed to discharge. There is absolutely no particulars given by the writ Petitioner as to how there is likelihood of loss of Government revenue because of the Govt. decision to change the size of IMFL bottles. The Court will definitely desist itself from making any roving enquiry on the basis of such petition. Moreover the decision to change the size of the liquor bottles is purely an administrative decision and challenge to the said decision at the instance of the present Petitioner, who has failed to highlight as to how such decision would adversely effect the downtrodden, deprived and illiterates section of the society and also the States revenue, cannot fall within the parameter of PIL.

10. In view of the aforesaid discussion, we are of the view that the Petitioner has miserably fails to make out any case for entertaining the present petition as PIL and, hence, the application is dismissed. No cost.