
(1993) 07 RAJ CK 0017

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4710 of 1989

Ratan Lal Soni

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 29-07-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) 2 RLW 567 : (1994) 1 WLC 679 : (1993) WLN 194

Hon'ble Judges : K.C. Agrawal, C.J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.C. Agrawal, C.J.—This writ petition, under Article 226 of the Constitution of India, has been filed by Ratanlal Soni, who claims himself to be a Journalist and Editor of "JUNG KE KHILAF JUNG", a Hindi weekly published from Jaipur, In paragraph 2 of the writ petition, he narrated the purpose of filing the writ petition and the same.

The present writ petition is being submitted as a public interest litigation to show as to how public authorities are making gross and wholesale violation of law.

2. In paragraph 10(a) of the writ petition, the petitioner alleged that the Hindi daily Rajasthan Patrika in its issue dated 21.8.1989 published a news item that the Jaipur Development Authority (hereinafter to be referred to as "the J.D.A.") approved schemes of three Housing Cooperative Societies ignoring all the relevant rules and regulations in that behalf. Relying on the Rajasthan Patrika of the aforesaid date, the petitioner claimed that the approved plan of these Housing Cooperatives involved lands of crores of rupees and these plans were earlier disapproved, but now in order to give advantage to these Societies, the plans have been approved. He alleged that the ulterior motive disclosed by the Rajasthan Patrika was an eye opener.

3. These three Societies were (i) Subhash Sindhi Grah Nirman Samiti

(hereinafter to be referred to as the Sindhi Samiti), (ii) Ramjupura Grah Nirman Sahkari Samiti") (hereinafter to be referred to as "the Ramjipura Samiti") and (iii) Meena Colony Grah Nirman Sahkari Samiti (hereinafter to be referred to as "the Meena Colony")

4. In Clause (b) of paragraph 10 of the writ petition, the petitioner alleged:

That the news item makes reference of Ramjupura Grah Nirman Sahkari Samiti but same has been controverted by the office bearers of the society and because of the controversy, the petitioner is not dealing with this item.

5. The petitioner thus left out the aforesaid Society.

6. Suggesting the motive for leaving out the Ramjupura Samiti, the learned Counsel appearing for the respondents Nos. 3 and 4 urged that the same had been done, with ulterior motive and for personal gain, inasmuch as, if the scheme of Ramjipura Samiti suffered from the same illegalities and deficiencies as the schemes of two other Societies, the petitioner was really seeking relief for public and he would have included Ramjipura Samiti also.

7. The suggestion of the respondents counsel with regard to motive does not appear to be wholly unreliable. That casts a doubt on the bonafides of the petitioner.

8. The allegations made against the Diamond Hill Scheme of Meena Colony are based on the newspaper report printed in the Rajasthan Patrika, copies of which have been filed alongwith the writ petition as Annexures 3 and 4, whereas the allegations made against the Sindhi Samiti are based on the news item published in "Rashtradoot", which is another Hindi daily newspaper published and printed from Jaipur.

9. The petitioner stated in paragraph 12 of the writ petition that he found that "the general belief of the people is that very high officials of the State including Shri M.D. Korani, Jaipur Development Commissioner and Shri V.B.L. Mathur, Chief Secretary of the State are the "Banami" beneficiaries of the allotment of plots in the scheme".

10. Relying on the aforesaid allegations, the petitioner's counsel submitted with vehemence that the scheme of the Meena Colony had been passed due to the influence of the aforesaid two persons.

11. The aforesaid allegations are wholly flimsy and ipse dixit of the petitioner. He did not produce any evidence in support of the allegations and he based the allegations on general belief.

12. Before dealing with the objections of the respondents counsel relating to locus standi and lack of bonafides, I would refer to another aspect of the case that the whole of the writ, petition being based on newspaper reportings, no credibility could be attached to the same.

13. The learned Counsel for the respondents has also urged that the affidavit of the petitioner is not even based on his personal knowledge, but on the at random knowledge acquired and, as such, it has no authenticity. So far as the newspaper are concerned, the learned Counsel relied on a decision of the Supreme Court in *Laxmi Raj Shetty and Another Vs. State of Tamil Nadu*, In this case, the Supreme Court held:

Judicial notice cannot be taken of the 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. 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.

14. The learned Counsel for the petitioner submitted in reply that with regard to public affairs and the facts stated in the writ petition, on proof could be filed and while dealing with PIL, the learned Counsel urged that rule of evidence would have to be relaxed and if that was not done, no PIL would succeed.

15. The allegations made in a writ petition whether it is PIL or other has got to be based on such facts and sworn in such a manner that inspires confidence.

16. Section 81 of the Evidence Act deals with presumption about the genuineness of documents narrated therein. Even if newspapers are admissible in evidence without formal proof, the paper itself is not proof of his contents. It would merely amount to an anonymous statement and cannot be treated as proof of the facts stated in the newspaper. The statement of a fact in a newspaper is merely hearsay and is inadmissible in the absence of the marker of the statement deposing to have perceived the fact reported. (see *Gullapalli Nageswara Rao etc. Vs. The State of Andhra Pradesh and Others*,

17. The rule against hearsay is one of the oldest of the exclusionary rules of evidence.

18. I have heard learned Counsel for both the parties on merit and from the counter affidavits of respondents Nos. 3 and 4, I am satisfied that the allegation of the petitioner that the J.D.A. passed the scheme against the Act and the provisions of law is not made out. In the counter affidavit of respondent No. 4, a complete reply to the petitioner's assertion has been given. Paragraph 10 of the counter affidavit did not only assert that the news item relied on by the petitioner was absolutely a concocted without any semblance of truth and foundation, but for the purposes of settling score with the then J.D.A, Commissioner Sh. M.D. Korani. According to this paragraph, the Diamond Hill Scheme of respondent No. 4 was discussed in BPC-II meeting held on 7.6.1989

and had been approved subject to the approval of change of land used by the Government. The respondent No. 4 alleged that the J.D.A. had approved technically schemes of 439 societies which were identically and similarly situated like answering respondent. The respondent No. 4 denied the allegation of the petitioner that the J.D.A. has disapproved as many as 107 schemes which were similarly and identically situated with that of the answering respondent. The 107 schemes have not been approved for certain other reasons.

19. From the facts stated in paragraph 10 of the counter affidavit of respondent No. 4, it appears that the answering respondent had purchased piece of land for valuable consideration of Rs. 22,50,000/- under registered sale deeds. It is too much to say that the approval of the scheme accorded by the J.D.A. was not wrong or incorrect. The approval of the scheme being illegal or wrong could not be established from the facts mentioned in the writ petition. What was emphasized by the learned Counsel for the petitioner was that at one time the scheme had been disapproved and that the same had been given approval by the J.D.A. in a hot haste. The mere fact that the scheme had been disapproved earlier could not be a ground to hold the present approval to be against the law and the rules. Sub-section (2) of Section 25 of the Jaipur Development Authority Act states that the Authority with the approval of the State Government may make any other modifications into the plan in order to promote planned development of any part of the Jaipur Region in more efficient manner.

20. The learned Counsel for the petitioner repeatedly urged that as the list of allottees of the land of Diamond Hill Scheme had not been supplied by the concerned respondent, the allotment was a fake and could not be considered to be as genuine or bonafide.

21. The list was admittedly supplied at the time of hearing of the writ petition. The respondent No. 4 had been called upon by an order of this Court to supply the list of allottees. Though the fact that the list had been prepared had been mentioned in the counter affidavit, but by mistake, it was not given to the petitioner. However, that omission would not illegalise the approval accorded by the J.D.A.

22. The respondent No. 3 has also established that the approval was accorded to it by the J.D.A. The respondent No. 3 has allotted land, which is the subject matter of the writ petition, to hundreds of persons. Some of them have made boundary walls.

23. The learned Counsel for the petitioner submitted that even if the boundary walls had been made, the approval accorded to the respondent No. 3 being against the law, the same could be reversed and the J.D.A. be directed to proceed in accordance with law.

24. From the counter affidavit, it is clear that the assertion of the petitioner about the approval being illegal is not correct. It is wrong that in flagrant violation of law and with ulterior motive that the approval had been given by the

J.D.A. The allegation against the respondent No. 3 about the scheme having been approved by the J.D.A. against the law and rules is liable to be discarded on the same ground of in admissibility as that against the respondent No. 4. For invalidating the approval of scheme of respondent No. 3, reliance had been placed on 15 of the writ petition which is based on news item published in Rashtradoot.

25. In *Laxmi Raj Shetty v. State of Tamil Nadu* (supra), the Supreme Court held that the newspaper is not admissible in 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.

26. The petitioner did not make any attempt to prove the contents of the facts stated in the news item.

27. The more important argument of the counsel for the respondents Nos. 3 and 4 is about locus standi and maintainability of the writ petition.

28. Recently, two decisions of the Supreme Court have laid down the law with regard to locus standi of a person to file PIL. These decisions are in *Janata Dal Vs. H.S. Chowdhary and Others*, and *Krishna Swami Vs. Union of India and another*, .

29. The relief sought by the petitioner was for declaring the approval of the schemes of respondents Nos. 3 and 4 to be illegal. The petitioner has, not claimed any relief for himself personally. He made assertion to the effect that he was interested in law being followed in the public authorities. It is too vague assertion to merit discussion of the various points put forward for invalidating an action of the State Government. The petitioner does not have any land of his involved in either of the two schemes directly or indirectly. He did not want any one of the schemes of his to be approved. He had neither filed any objection to the schemes submitted by the respondents Nos. 3 and 4 nor desired any plan of his to be approved. The relief claimed is of a general type. The writ petition does not give any idea of the public who would be benefited on relief being granted. The persons for whom the relief is sought must appear and make it known that they are claiming such a relief, it cannot be thrust upon them unless they wish it.

30. It is said time and again. In the word of Bhagwati, J. (as he then was) "the Courts must be careful in entertaining public interest litigations" or in the words of Sarkaria, J. "the applications of the busy bodies should be rejected at the threshold itself and as Krishna Iyer, J. has pointed out, "the doors of the Courts should not be ajar, for such vexatious litigants".

31. Khalid, J. in his separate supplementing judgment in *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, said:;

Today public spirited litigants rush to Courts to file cases in profusion under this attractive name. They must inspire confidence in Court and among the public. They must be above suspicion.... 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 not restrict the free flow of such cases in the name of public interest litigations, the traditional litigation would suffer and the Courts of law, Instead of dispensing justice, will have to take upon themselves administrative and executive functions.... 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 any one to walk in. It is necessary to have some self-imposed restraint on public interest litigants.

32. Sabyasachi Mukharji, J. (as he then was) speaking for the Bench in *Ramsharan Autyanuprasi and another Vs. Union of India and others*, was in full agreement with the view expressed by Khalid, J. in *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, and added that public interest litigation" is an instrument of the administration of justice to be used properly in proper cases.

33. Sarkaria, J. in *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, expressed his view that the application of the busy body should be rejected at the threshold in the following terms:

It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories; (i) "person aggrieved"; (ii) "stranger"; (iii) busybody or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of Pro Bono Public, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spooking the wheels of administration. The High Court should do well to reject the applications of such busy bodies at the threshold.

34. In *Janata Dal v. H.S. Chowdhary* (supra), the Supreme Court held:

Be that as it may, it needless to emphasize that the requirement of locus standi of a party to a litigation is mandatory; because the legal capacity of the party to any litigation whether in private or public action in relation to any specific remedy sought for has to be primarily at the threshold.

35. It was further held:

In contract, the strict rule of locus standi applicable to private litigation is relaxed and a broad rule is evolved which gives the right of locus standi to any member of the public acting bonafide and having sufficient interest in instituting an action

for redressal of public wrong or public injury, but who is not a mere busy body or a meddlesome interloper; since the dominant object of PIL is to ensure observance of the provisions of the Constitution or the law which can be best achieved to advance the cause of community or disadvantaged groups and individuals or public interest by permitting any person, having no personal gain or private motivation or any other oblique consideration but acting bona fide and having sufficient interest in maintaining an action for judicial redress for public Injury to put the judicial machinery in motion like action popularise of Raman Law whereby any citizen could bring such an action in respect of a public delict.

36. In the instant case, I could not be persuaded to accept that the public interest in any way was going to be served by the reliefs sought in the writ petition. To me, it appears that the writ petition was filed to feed grudge which the petitioner entertained against some of the officials. Both of the officers mentioned above were high ranking officials of the State of Rajasthan and wild allegations made against them being without any basis lead one to hold that they were purposive and not for achieving any public good.

37. In judicial Review of Administrative Action S.A.de Smith, (3rd edn. at p. 293) stated that:

The concept of bad faith...in relation to the exercise of statutory powers...comprise dishonesty (or fraud) and malice. A power is exercised fraudulently if its repository intends to achieve an object other than that for which he believes the power to have been conferred. His intention may be to promote another public interest or private interests. A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise.... The administrative discretion means power of being administratively discreet. It implies authority to do an act or to decide a matter a discretion.

38. Mere assertion or a vague or bald statement is not sufficient to prove the allegation against an Authority that he has acted with bias. If it is established that the action has been taken mala fide for any such consideration or by fraud on power or colourable exercise of power, it can certainly not be allowed to stand. But, nothing of that type has been established in the instant case.

39. In State of Bihar and Another Vs. P.P. Sharma, IAS and Another, the Supreme Court observed:

Public administration cannot be carried on in a spirit of judicial detachment. There is a very wide range of discretionary administrative acts not importing an implied duty to act judicially though the act must be done in good faith to which legal protection will be accorded. But the administrative act de hors judicial favour does not entail compliance with the rule against interest and likelihood of bias. It is implicit that a complainant when he lodges a report to the State House Officer accusing a person of commission of an offence, often may be a person aggrieved, but rarely a pro bono public. Therefore, inherent animosity is licit and

by itself is not tended to cloud the veracity of the accusation suspected to have been committed, provided it is based on factual foundation.

40. While it is the duty of this Court to give relief to a person to whom injustice had been done, it is necessary to judge that the weapon of P1L is not misused creating a bottleneck in the Court preventing other genuine cases being considered by the Court.

41. The learned Counsel for the respondents Nos. 3 and 4 urged that the petitioner did not implead Ramjipura Samiti and claim relief against it by seeking declaration that its scheme approved was illegal or invalid. The petitioner did so as suggested by the respondents with ulterior motive or for gain which could be guessed from the circumstances of the case. As I have rejected the writ petition on other grounds, I would not like to base my decision on this circumstance only.

42. In the result, the writ petition fails and is dismissed with costs.