
(2002) 11 AP CK 0087

In the Andhra Pradesh High Court

Case No : Writ Petition No. 21912 of 2002

S. Inderasaina Reddy

APPELLANT

Vs

Superintendent of Police and Others

RESPONDENT

Date of Decision : 25-11-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 1 ALD 458 : (2003) 1 ALT 121

Hon'ble Judges : Motilal B. Naik, J; Dalava Subrahmanyam, J

Bench : Division Bench

Advocate : Prabhakar Sripada, for the Appellant; Government Pleader for Respondent Nos. 1 to 3 and R. Raghunandan Rao, for the Respondent

Final Decision : Dismissed

Judgement

Motilal B. Naik, J.—Petitioner claiming to be the General Secretary of Andhra Pradesh Congress Committee, approaches this Court invoking Article 226 of the Constitution of India and seeks a writ of mandamus directing the 1st respondent to initiate investigation against the 4th respondent pursuant to the petitioner's legal notice dated 26-9-2002, pertaining to the grant of the D-Form patta to the 4th respondent on 20-11-1978 vide File No. 1597/88 and to grant such other relief as it deem to be fit and proper in the circumstances of the case.

2. It is submitted by Sri Sripada Prabhakar, learned Counsel for the petitioner that on 20-11-1978 the 3rd respondent-District Collector, Nellore District, assigned Ac.4.95 cents of land by issuing D-Form patta to the 4th respondent Sri M. Venkaiah Naidu, who is presently holding the office of the President of Bharatiya Janata Party. According to the learned Counsel, grant of D-Form patta on 20-11-1978 assigning Ac.4.95 cents of land to the 4th respondent is contrary to the norms governing the conditions for issuance of D-Form patta. It is stated that as on the date of said assignment of land, the 4th respondent, who hails from an affluent family, was a Member of Legislative Assembly of Andhra Pradesh State representing Udayagiri Constituency. He further submits that on

20-11-1978 as many as 565 D-Form pattas were assigned to many individuals in Kasumuru Village, Venkatachalem Mandal, Nellore District, out of which 325 assignees belonged to Scheduled Caste, Scheduled Tribe and Backward Class communities and each individual was assigned less than one acre of land, whereas the 4th respondent was assigned Ac.4.95 cents of land. The learned Counsel stated that "landless poor" as defined in the Government Order is a person who owns not more than one acre of wet land or 5 acres of dry land. The 4th respondent, who hails from an affluent family, was a Member of Legislative of Assembly as on 20-11-1978, misused his position and got D-Form patta for Ac.4.95 cents of land, though he is not entitled for such assignment as he does not come under the purview of "landless poor person" as defined in the Government Orders, which act amounts to cheating the Government and public.

3. The learned Counsel further submits that the petitioner came to know about the said assignment of land to the 4th respondent only on 16-8-2002, when a prominent English Daily Newspaper viz., Deccan Chronicle, published an article in front page under the caption "Venkaiah's lands in Trouble" pointing out that the 4th respondent was assigned Ac.4.95 cents of land on 20-11-1978. On the basis of this news-item, the Opposition Parties in the State, particularly the leaders of the Congress Legislative Party, Dr. Y.S. Rajashekhar Reddy as well as the All India Congress Committee Secretary, Sri V. Hanumantha Rao and several others, demanded cancellation of the D-Form patta granted to the 4th respondent and also demanded CBI enquiry into the matter.

4. It is also stated by the learned Counsel that though representations are made to respondents 1 to 3 to launch prosecution against the 4th respondent on the ground that the 4th respondent had cheated the Government, which offence is punishable u/s 420 IPC, respondents 1 to 3 have failed to initiate proceedings against the 4th respondent and are shielding the misdeeds of the 4th respondent, as the 4th respondent is the President of the Bharatiya Janata Party, which is the Ruling Party in the Center. It is also stated that even though a legal notice was got issued on 26-9-2002 to respondents 1 and 3 on 26-9-2002 on behalf of the writ petitioner, requiring them to take action against the 4th respondent according to law, by launching prosecution against him, they are paying a deaf ear and therefore, stated that the petitioner is compelled to approach this Court invoking the jurisdiction of this Court under Article 226 of the Constitution of India and seeks appropriate direction.

5. This writ petition fell for consideration for the first time before this Court on 1-11-2002 on which date the matter was directed to be listed on 5-11-2002. On 5-11-2002 the learned Counsel for the petitioner sought time for obtaining necessary instructions from his client and thus the matter was directed to be listed on 8-11-2002. On 8-11-2002 on behalf of the 4th respondent Sri Raghunandan Rao, learned Counsel made his appearance and opposed the writ petition.

6. Sri Raghunandan Rao, learned Counsel for the 4th respondent submits that

since the petitioner is the General Secretary of the Andhra Pradesh Congress Committee, which is a political party opposed to Bharatiya Janata Party, this writ petition is nothing but a politically motivated litigation and has to be rejected at the threshold. It is further submitted that there is no substance in the allegations and pleaded for dismissal of the writ petition.

7. The fact of assignment of Ac.4.95 cents of lands by issuing D-Form patta to the 4th respondent on 20-11-1978 is not disputed. The further fact that the 4th respondent was a Member of Legislative Assembly representing Udayagiri Constituency at that point of time and presently is the President of the Bharatiya Janata Party is also not disputed. Petitioner, claiming to be the General Secretary of Andhra Pradesh Congress Committee, seeks appropriate direction from this Court directing respondents 1 to 3 for initiation of investigation and launching prosecution against the 4th respondent.

8. This writ petition is in the nature of public interest litigation. The Hon"ble Supreme Court of India through various pronouncements had laid down principles regarding entertaining public interest litigation. In *S.P. Gupta Vs. President of India and Others*, , the Supreme Court held that Courts must be careful that members of the public who approach the Court acting bona fide and not in personal garb of private profit or political motivation or other oblique consideration. It is further held that the Court must not allow its process to be abused. In *Mrs. Veena Sethi Vs. State of Bihar and Others*, , the Supreme Court held, "the role of law requires to be played for the proper and ignorant who constitute a large bulk of humanity in this country and the Court must uphold the basic human rights of weaker sections of the society." In *State of Himachal Pradesh Vs. A Parent of a Student of Medical College, Simla and Others*, , the Supreme Court held, "where the Court finds, on being moved by an aggrieved party or by any public spirited individual or social action group, that the executive is remiss in discharging its obligation under the Constitution or the law, so that the poor and the under-privileged continued to be subjected to exploitation and injustice or are deprived of their social and economic entitlements or that social legislation enacted for their benefit is not implemented thus depriving of their rights and benefits conferred upon them, the Courts certainly can and must intervene and compel the executive to carry out its constitutional and legal obligations and ensure that the deprived and vulnerable sections of the community are no longer subjected to exploitation or injustice and they are able to realize their social and economical rights."

9. In *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, , the Supreme Court held, "the Court should not take cognizance in such matters merely because of its attractive name. The petitioner must inspire the confidence of the Court and must be above suspicion." In *Municipal Corporation of Delhi Vs. Sheila Puri*, , it is held by the Supreme Court that "the PIL (Public Interest Litigation) is for making basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social economic

and political justice."

In *Gyani Davendar Singh Sant Sepoy Sikh v. Union of India* AIR 1995 SC 1848, the Supreme Court held, "the High Court, while entertaining a PIL must indicate the public interest was involved in the case."

10. The general principles as laid down by the Supreme Court in various decisions (*supra*) would amply demonstrate that Courts must be careful that members of the public who approach the Courts are acting bona fide and not in personal garb of private profit or settle political score and that the role of law requires to be played for the poor and ignorant who constitute a large bulk of humanity in this country and for making basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social, economic and political justice. In *Janata Dal Vs. H.S. Chowdhary and Others*, it is held by the Supreme Court that the Courts must not allow its process to be abused by any politicians and others to gain political objectives.

11. On behalf of the petitioner it is though strenuously contended that the 4th respondent has misled the appropriate authority and got assignment of Ac. 4.95 cents of land through issuance of D-Form patta and that the 4th respondent though was not eligible for such grant of patta, nothing is placed before this Court by the petitioner to show to this Court that as on the date of assignment of patta to the 4th respondent by the 3rd respondent-District Collector, the 4th respondent was in possession of more land than the permissible entitlement, entitling him to seek grant D-Form patta. Except submitting that the 4th respondent was a Member of Legislative Assembly on the date of assignment of D-Form patta i.e., 20-11-1978, no other information is forthcoming on behalf of the petitioner. We must say without any hesitation, merely because 4th respondent was elected representative as on 20-11-1978, that does not necessarily mean that a person being an elected representative is not entitled to seek D-Form patta, if he or she fulfils the other requirements for grant of such patta. In the absence of any material placed before this Court, it is difficult for us to hold that the 4th respondent deceitfully obtained D-Form patta by making misrepresentation or false representation before the appropriate authority. It is though contended by the learned Counsel for the petitioner that burden lies on the 4th respondent to prove that as on the date of assignment of land i.e., 20-11-1978, the 4th respondent was entitled for grant of D-Form patta, we are afraid, the petitioner cannot place the burden on the 4th respondent to prove that he was landless poor and entitled for grant of D-Form patta. The petitioner being the General Secretary of the Andhra Pradesh Congress Committee, is neither an illiterate person nor helpless in getting all the information which could be placed before the Court enabling this Court to pass appropriate orders. Therefore, we are of the view, when once the petitioner seeks appropriate direction from this Court, the onus is only on him to prima facie establish that the 4th respondent had in fact misrepresented and cheated the Government and obtained D-Form patta. On the basis of these facts, we are inclined to hold the

allegations made requires either any consideration by us or there is any element of public interest which requires consideration from us.

12. In the legal notice got issued by the petitioner to respondents 1 and 3, dated 26-9-2002, a copy of which is placed before this Court as material as Ex.P6 at page No. 25 of material papers, the act of the 4th respondent is described as cheating. Section 415 IPC defines "cheating", which reads as follows:

"Section 415: Cheating :--Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission cause or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"."

Section 417 IPC deals with punishment for cheating, which reads as under:

"Section 417 : Punishment of cheating :--Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both."

Section 420 IPC provides punishment for cheating and dishonestly inducing delivery of property, which reads as under:

"Section 420. Cheating and dishonestly inducing delivery of property :--Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Section 420 provides punishment of imprisonment of either description for a term, which may extend to seven years, and shall also be liable to fine, for cheating and dishonestly inducing delivery of property. In the legal notice issued on his behalf, which is reflected at page No. 25 of the material papers, it is stated that the 4th respondent seems to have indulged in cheating within the meaning of Section 420 IPC.

13. As discussed above, when the petitioner has not placed any record before this Court to show that the 4th respondent, though had more land than the permissible land for grant of D-Form patta, deliberately cheated and dishonestly induced the appropriate authority and got delivery of Ac.4.95 cents of land, it is difficult for us to prima facie agree with the submissions made on behalf of the petitioner.

14. As discussed by us, public interest litigation cannot be converted into a politically motivated interest. According to the petitioner, the instance of granting

D-Form patta seemed to have taken place on 20-11-1978. Nearly after lapse of 24 years from the date of granting D-Form patta, the petitioner now seeks a direction from this Court to respondents 1 to 3 to initiate investigation and to launch prosecution against the 4th respondent. In our considered view, the effort of the petitioner at this point of time is nothing but abuse of process of the Court. On the facts of this case, we can describe the litigation as politically motivated and as such this petition has to be rejected on this ground alone.

15. The learned Counsel for the petitioner also contended that despite giving complaint, the respondent 1 to 3 have not proceeded to make a preliminary investigation as provided u/s 156 IPC, into a non-cognizable offence and stated that non-registration of FIR does not in any way come on the way for making preliminary investigation. In support of the above contention, the learned Counsel relied on a decision of the Supreme Court in *Madhuresh Vs. Cbi and others*, . Insofar as the principle laid down by the Supreme Court in this decision is concerned, we do not think the respondents are hesitant to proceed to make preliminary investigation only on the premise of non-registration of FIR. It is needless to say when untenable complaints are lodged it is not necessary for those authorities to make enquiries. The sum and substance of the allegations would have to be taken into consideration to decide whether there is a case for making preliminary investigation also. Therefore, in our considered view, taking shelter under the decision of the Supreme Court (*supra*), the petitioner cannot invoke the jurisdiction of this Court under Article 226 of the Constitution of India as if respondents 1 to 3 have failed to make preliminary investigation only on the premise of non-registration of FIR.

16. For all the reasons we find no merits in the contentions, nor there is any public interest involved for entertaining the writ petition. We accordingly dismiss the writ petition. No order as to costs.