
(2012) 02 AHC CK 0278
In the Allahabad High Court
Case No : Misc. Bench No. 11510 of 2011

Sabhajeet Singh [P.I.L.] Criminal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-02-2012

Acts Referred:

Allahabad High Court (Amendment) Rules, 2010 — Rule 1, 3
Allahabad High Court Rules, 1952 — Rule 1(3), 1(3A)
Constitution of India, 1950 — Article 225

Citation : (2012) 3 ADJ 391

Hon'ble Judges : Imtiyaz Murtaza, J;Devendra Kumar Upadhyaya, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hon''ble D.K. Upadhyaya, J.—The instant writ petition styled as Public Interest Litigation has been filed with the following reliefs:

1. to issue a suitable order or direction or writ in the nature of mandamus commanding the opposite parties no. 1 to 6 to punish the opposite party no.7 and 8 and initiate the criminal proceeding against him in the light of the averments made in this writ petition.
2. to issue a suitable order or direction or writ which this Hon''ble Court may deem fit, just and proper direct the opposite party no. 1 to 6 to recover the emoluments and other facilities drawn by the opposite party no.8 as Minister and Member of the Legislative Council which the opposite party no.8 has caused to the State Exchequer.
3. to issue a suitable order or direction or writ directing the opposite parties no. 1 to 6 to act positively and quickly in the matter and sent the cheater/opposite party no.8 behind the bars and refer the matter to the CBI or any other agency which this Hon''ble Court may deem fit and proper.
4. any other order or direction which this Hon''ble Court may deem fit and proper

under the circumstances of the case and for protecting the interest of the petitioner may also be awarded to the petitioner and against the opposite parties.

2. A perusal of the aforequoted prayers made in the writ petition reveal that the petitioner has sought relief for issuance of a writ in the nature of mandamus to punish the opposite party nos. 7 & 8 and to initiate criminal proceedings against them in the light of averments made in the writ petition. The petitioner has also prayed that the emoluments and other facilities drawn from the State Exchequer by the opposite party no.8 as Minister in the State Government and also as Member of Legislative Council of Uttar Pradesh be also ordered to be recovered. The petitioner has further prayed that the matter be referred to CBI or any other agency for inquiry.

3. The allegations made in the writ petition are to the effect that opposite party no.7, Ram Charan Kushwaha, son of Late Bhagwat Prasad Kushwaha and opposite party no.8, Babu Singh Kushwaha, son of Late Bhagwat Prasad Kushwaha are one and the same person. That opposite party no.7, Ram Charan Kushwaha contested the election of U.P. Legislative Council using false name of Babu Singh Kushwaha and after getting elected as member of Legislative Council he got a berth in the Cabinet of the State Government. That the aforesaid act of opposite party no.7 contesting the election bearing false name is a fraud and hence, authorities be directed to recover the emoluments and other facilities drawn by opposite party no.7 as Minister in the State and also as Member of Legislative Council.

4. It has further been averred by the petitioner that the opposite party no.7 by contesting the election in the name of Babu Singh Kushwaha has defrauded the Election Commission and the State of U.P., which is an offence, for which opposite party nos. 7 and 8 be punished.

5. Heard Sri Surya Kant, learned counsel for the petitioner, learned Government Advocate for opposite party no.1, Sri Lalit Shukla, learned counsel for the opposite party no.3 and Sri Manish Mathur, learned counsel for the opposite party no.4.

6. We have also perused the documents available on record.

7. While dealing with the issue raised by the petitioner in the instant writ petition, the Court confronted the learned counsel for the petitioner, Sri Surya Kant with a query as to whether while filing the instant writ petition, the affidavit as required to be filed by a person intending to file Public Interest Litigation under the newly inserted sub-rule 3 A in Rule 1 of Chapter XXII of the Allahabad High Court Rules 1952 has been filed? On the said query made by the Court, the learned counsel appearing for the petitioner could not furnish any satisfactory reply. As a matter of fact, in the entire writ petition, no averments regarding the credentials of the petitioner have been made, neither has it been stated by him that the writ petition has been filed to espouse some public cause and further that he does not have any personal or private interest in the matter.

8. While noticing the development of Public Interest Litigation and historically analysing the same and elaborating the duty and the authority enjoined on the Superior Courts, Hon''ble Supreme Court in the case of State of Uttranchal vs Balwant Singh Chauhal and Others reported in AIR 2010 SCW 1029, requested the High Courts to frame rules for dealing with Public Interest Litigations. Hon''ble Supreme Court while noticing the need of encouraging genuine and bonafide PILs also emphasized that PILs for extraneous considerations and with oblique motives should be discouraged and curbed. Their Lordships of the Hon''ble Supreme Court in the said judgment have also observed that before entertaining a PIL, the courts should prima facie verify the credentials of the petitioner and also that the court should be satisfied regarding the correctness of the contents of the petition. The said directions by the Hon''ble Supreme Court in the case of State of Uttranchal vs Balwant Singh Chauhal and others (supra) have been given in para 198 of the judgment which is being reproduced hereinbelow:

198. In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:-

(1) The courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the Rules prepared by the High Court is sent to the Secretary General of this court immediately thereafter.

(3) The courts should prima facie verify the credentials of the petitioner before entertaining a P.I.L.

(4) The court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The court should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The court should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

(8) The court should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary

costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.

9. In view of the aforesaid directions of the Hon''ble Supreme Court, Rule 3 A in Rule 1 of Chapter XXII of the Rules of the Court has been inserted by notifying the Allahabad High Court (Amendment) Rules, 2010. The aforesaid newly inserted rule has been framed by this Court to achieve the objective of framing of Rules as directed by Hon''ble Supreme Court in the case of State of Uttaranchal vs Balwant Singh Chauhan and others (supra).

10. The notification dated 01.05.2010 whereby Allahabad High Court (Amendment) Rules 2010 was notified is being reproduced hereinbelow:-

HIGH COURT OF JUDICATURE AT ALLAHABAD

AMENDMENT SECTION

NOTIFICATION No. 105/VIIIc-2 Dated May 1, 2010

Correction Slip No. 241

In exercising of the powers conferred by Article 225 of the Constitution of India and all other powers enabling it in this behalf, the High Court of Judicature at Allahabad is pleased to make the following amendment in Chapter XXII of the Allahabad High Court Rules, 1952 Volume I with effect from the date of its Publication in the Official Gazette;

THE ALLAHABAD HIGH COURT (AMENDMENT) RULES, 2010

In the Allahabad High Court Rules, 1952 the following sub rule (3A) in Rule 1 of Chapter XXII shall be inserted :

(3 A) In addition to satisfying the requirements of the other rules in this Chapter, the petitioner seeking to file a Public Interest Litigation, should precisely and specifically state, in the affidavit to be sworn by him giving his credentials, the public cause he is seeking to espouse; that he has no personal or private interest in the matter; that there is no authoritative pronouncement by the Supreme Court or High Court on the question raised; and that the result of the Litigation will not lead to any undue gain to himself or anyone associated with him, or any undue loss to any person, body of persons or the State.

EXPLANATORY NOTE

This is not a part of the sub-rule (3A) but is intended to indicate its general purport)

The Hon''ble Supreme Court of India in its judgment in CA No. 1134-1135/02 State of Uttaranchal Versus Balwant Singh Chauhan and Others reported in has observed that in the process of Court is frequently abused in the name of Public Interest Litigation and has directed all the High Court to frame rules or prevent the same.

The aforesaid amendment is intended to achieve the said object.

By order of the Court.

Sd. Dinesh Gupta

Registrar General

11. The first question which needs to be examined by the Court in the instant writ petition is as to whether in the light of requirement of Allahabad High Court (Amendment) Rules 2010, if a person approaching the Court in a Public Interest Litigation does not disclose his credentials and also does not disclose as to what public cause is he seeking to espouse, the writ petition should be entertained in the light of the directions given by the Hon''ble Supreme Court in the case of State of Uttranchal vs Balwant Singh Chaufal and others (supra).

12. A perusal of the entire averments made in the writ petition unambiguously disclose that the petitioner has not even murmured a whisper about his credentials. He has not stated as to which public cause is he seeking to espouse and further that result of the litigation will not lead to any undue gain to himself or anyone associated with him. In absence of any averment made by the petitioner regarding his credentials, it is abundantly clear that the petitioner has not fulfilled the requirement of Allahabad High Court (Amendment) Rules 2010. The Court may emphasize here that the Allahabad High Court Rules 1952 were amended by means of notification dated 01.05.2010 not as a mere formality but requirement of observance envisaged by the newly inserted sub-rule 3 A in Rule 1 of Chapter XXII of the Allahabad High Court Rules, 1952 has an object sought to be achieved as directed by the Hon''ble Supreme Court. The said object which is sought to be achieved by the Allahabad High Court (Amendment) Rules 2010 is to ensure that frivolous PILs and the PILs being filed for extraneous considerations and with oblique motive are discouraged and tendency of flooding the courts with such PILs by persons without disclosure of their credentials be curbed.

13. The directions issued by the Hon''ble Court in the case of State of Uttranchal vs Balwant Singh Chaufal and others (supra) are to be followed with the objective of maintaining the purity of the stream of justice. The Public Interest Litigation is an instrument to be used by the Courts to achieve genuine public interest. It should not be permitted to be used as a weapon to farther any private, malicious or vested interest. Thus, it has to be used with great care and circumspection. Another factor which needs to be taken into account is the time of the Court which is lost in dealing with such proceedings which are frivolous in nature and not aimed at achieving any genuine cause having wider public interest. In this regard, reference can be made to the observations made by the Hon''ble Supreme Court in the case of M/s Holicow Pictures Pvt Ltd. vs Prem Chandra Mishra and Others reported in AIR 2008 Supreme Court 913 wherein Hon''ble Supreme Court putting a word of caution has observed as under:

16. In subsequent paras of the said judgment, it was observed as follows:

It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have as locus standing 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.

17. It is depressing to note that on account of such trumpery proceedings initiated before the Courts, innumerable days are wasted, the time which otherwise could have been spent for disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy, whose fundamental rights are infringed and violated and whose grievances go unnoticed, un-represented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters-government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenu expecting their released from the detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffing their faces by wearing the mask of public interest litigation and get into the Courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the Courts never moves, which piquant situation creates frustration in the minds of the genuine litigants and resultantly they loose faith in the administration of our judicial system.

18. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who

approaches the Court is acting bona fide and not for personal gain or private motive or political motivation or other oblique considerations. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserves to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

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20. The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busybodies or meddling interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect.

14. In the light of aforesaid observations made by the Hon'ble Supreme Court in the cases of Balwant Singh Chaufal and others (supra) and M/s Holicow Pictures Pvt Ltd (supra), the Court opines that fulfillment of the requirement of the amendment inserted in the High Court Rules vide notification dated 01.05.2010 should not be taken lightly. Rules have been framed for being adhered to. Any person filing Public Interest Litigation has to satisfy the Court that he has a credible locus and also that he has filed the writ petition in larger public interest. In the instant case, the writ petition does not disclose even a single word about the credentials of the petitioner and his antecedents.

15. In view of above observations, the Court comes to the irresistible conclusion that for want of fulfillment of the requirement of Allahabad High Court (Amendment) Rules, 2010, the writ petition needs to be dismissed.

16. However, the Court during the course of hearing proceeded to examine the averments made in the writ petition. On being asked as to what offence, which can be said to be constituted even as per averments made in the writ petition, has been committed by the private respondent, for which he can be punished or in respect of which criminal proceedings against him can be initiated, learned

counsel for the petitioner could not satisfy the Court. Even otherwise, the allegations made in the writ petition are only to the effect that the private Respondent while contesting the election of U.P. State Legislative Council in the year 2006 used the name of Babu Singh Kushwaha. It is not a case of impersonation which can be said to have resulted into some kind of illegal benefit to the private Respondent.

17. In compliance of the order of this Court dated 18.11.2011, the Principal Secretary, Legislative Council, has held an inquiry and submitted his report dated 16.12.2011 to this Court which has been taken on record. The report so submitted by the Principal Secretary, Legislative Council says that the private Respondent had contested the election of Legislative Council using name of Babu Singh Kushwaha and he used the said name in all the papers furnished at the time of his nomination.

18. The report so submitted by the Principal Secretary, Legislative Council needs to be examined against the backdrop of the allegations made in the writ petition. The petitioner in the instant writ petition has stated that on the death of his father, opposite party no. 7 inherited certain agricultural land and in the mutation proceedings, name of the private Respondent was recorded in the revenue records as Ram Charan alias Babu Singh Kushwaha, son of Bhagwat Prasad. The said order of mutation in favour of the private respondent in the style as aforesaid, was passed by the competent authority on 24.08.2003. Thus, from the averments made by the petitioner himself, it is clear that the private Respondent has been using Babu Singh as his alias since the year 2003 itself. On a query being made to learned counsel for the petitioner as to how using of an alias name constituted an offence, no satisfactory reply could be given by him.

19. It is also not a case where some person has withdrawn the emoluments and other facilities from the State Exchequer impersonating himself to be some one else. Thus, the Court finds that the prayer for recovery of emoluments and other facilities drawn by the private respondent, in the facts mentioned in the writ petition, is misconceived. The petitioner himself has stated that in fact opposite party nos.7 and 8 are the same person. For these reasons, prayer made by the petitioner for getting some inquiry conducted into the allegations made in the writ petition is also not tenable.

20. In the light of foregoing discussions, this Court comes to the definite conclusion that the instant writ petition does not raise any question of larger public cause so as to call for any interference by this Court. Accordingly, the writ petition is dismissed, however, with no order as to cost.