
(1999) 06 PAT CK 0042
In the Patna High Court
Case No : C.W.J.C. No. 4186 of 1999

Samta Party and Another	Vs	APPELLANT
The Union of India (UOI) and Others		RESPONDENT

Date of Decision : 22-06-1999

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14
Constitution of India, 1950 — Article 226, 32

Citation : (1999) 2 PLJR 845

Hon'ble Judges : J.N. Dubey, Acting C.J.; R.M. Pd., J

Bench : Division Bench

Advocate : P.K. Sahi and Rajesh Prasad Choudhary, for the Appellant; J.P. Karn, S.A. Narayan, V.N. Sinha and Anup Kumar Sinha for State of Bihar, for the Respondent

Final Decision : Dismissed

Judgement

1. Petitioners by way of Public Interest Litigation have sought for appropriate writ, rule, order or direction quashing orders of transfer of Chief Secretary, Director General of Police and Home Commissioner, Government of Bihar besides several other officials like. District Magistrate, Superintendents of Police and officers of All India Service and Provincial Service.

2. Case of the Petitioners is that after presentation of the Finance Bill, the Parliament was adjourned for about a month. During this period of adjournment, one of the constituents of the ruling coalition withdrew its support to the Government and, therefore, the President of India directed the Prime Minister to seek vote of confidence in the Lok Sabha. In deference to the direction of the President, the Prime Minister moved a motion of confidence in the Lok Sabha which was put to vote on 17.4.1999 after two days debate. The motion of confidence was rejected by the House and as such, the Prime Minister submitted his resignation along with those of his Council of Ministers to the President. The President accepted the resignation and asked the Prime Minister to continue in

office till alternative arrangement could be made. For next one week, various Political Parties tried to form a front which would enjoy majority support in the House and could provide an alternative Government at the Centre. But all efforts in this direction failed and finally when on 25.4.1999, Congress President, Ms. Sonia Gandhi, conveyed to the President that she would not be able to form a Government, it became certainty that no alternative Government could be formed. Thereafter, the Prime Minister was summoned by the President and it seems that he was directed to recommend dissolution of the Lok Sabha. In other words, by 24.4.1999 or latest by 25.4.1999 mid-term polls for Lok Sabha became a certainty.

3. Further case of the Petitioner is that the Government of Bihar on the evening of 25.4.1999 transferred the Chief Secretary, who had been appointed only one and half month ago, and as soon as his successor assumed, the office of Chief Secretary, the Director General of Police, Home Commissioner and a large number of District Magistrates, Superintendents of Police were also transferred and replaced by hand-picked officers. Curiously enough all the substitute officers took over charge of their respective offices in the night of 25.4.1999 itself. It is thus clear that this exercise has been carried out with a view to pre-empt the Election Commission from interfering in the matter as formal announcement of election had not been made by then. Though the dates of poll had not been announced by 25.4.1999, it had become certain that the country is heading for a mid-term poll. Sensing this, the Government of Bihar hurriedly transferred all such officers who were known for their fairness and impartiality. Such officers who are not expected to knuckle under the pressure of the power that he have been shown the exit door, These transfers were followed by transfer of various other field officers such as Deputy Development Commissioners, Sub-divisional officers, Deputy Superintendents of Police and other lower rank officials. The only reasonable conclusion that can be reached is that the exercise is total misuse of authority and done with the solitary object of manipulating the entire poll exercise in the ensuing election.

4. Further case of the Petitioners is that the Governor of Bihar in exercise of his constitutional authority, has framed rules of executive business for providing good governance and for transaction of Government business. In exercise of authority vested by the rules of executives business, the Government of Bihar has issued executive instructions according to which in normal circumstances, Government servants are transferred in the month of May-June or November-December. However, the State Government in complete disregard to the aforesaid instructions made large scale transfers without any justification. On 27.4.1999 the National President of Petitioner met the Chief Election Commissioner and requested him to take immediate action for restoring status quo ante and to prevent the recurrence of such commission. Simultaneously, a delegation of Bhartiya Janta Party also met the Governor of Bihar and apprised him of the situation. But the Petitioners are aware that the Election Commissioner and the Governor are hardly expected to take any action against

the State Government as the formal announcement for holding elections for 13th Lok Sabha has not yet been issued. Left with no alternative, they have approached this Court under Article 226 of the Constitution.

5. Heard the learned Counsel for the parties and perused the record.

6. Mr. P.K. Sahi, learned Counsel for the Petitioners contended that the transfer orders are mala fide and are liable to be quashed. On the other hand, Mr. S.A. Narayan, learned Advocate General while contesting the claim of the Petitioners on merit, contended that this writ petition is not legally maintainable.

7. We first propose to consider the objection of the learned Advocate General to the maintainability of the writ petition.

8. Learned Advocate General contended that the writ petition having been filed by a Political Party, is not a Public Interest Litigation. According to him, Petitioner No. 1, Samta Party, is a registered Political Party and while it is an opposition party in the State of Bihar, it is a member of ruling coalition at the Centre. According to him, Samta Party has been trying to get the State Government dismissed right from the beginning on one ground or the other. It also succeeded twice in getting the recommendation made for imposition of President Rule in the State. This writ petition has been filed by the Petitioners to satisfy personal vendetta and is more in the nature of Personal/Political Interest Litigation than Public Interest Litigation.

9. We find substance in the argument of the learned Advocate General. It is now well settled that a Public Interest Litigation can be maintained by a person or group of persons, who have no personal interest in the matter and for the benefit of those underprivileged and Helpless, who cannot come to the Court of law for the redress of their grievance. Chief Secretary, Director General of Police and others officials, who have been transferred by the impugned orders, are neither underprivileged nor helpless and, therefore, it cannot be claimed that they could not come to the Court for the redress of their grievance. Similarly the Petitioners, who have been deggers drawn with the State Government, cannot claim that they have no personal interest in the matter. Our this view finds support from a decision of the Supreme Court in *S.P. Gupta Vs. President of India and Others*, which reads thus:

But we must have to make it clear that the individual who moves the Court for judicial redress in cases of this kind must be acting bona fide with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration the Court should not allow itself to be activated at the instance of such person and must reject his application at the threshold, whether it be in the form of a letter addressed to the Court or even in the form of a regular writ petition filed in court.

In AIR 1991 420 (SC) the Supreme Court held as under:

Public interest litigation cannot be invoked by a person or body of persons to

satisfy his or its personal grudge and enmity. If such petitions under Article 32, are entertained it would amount to abuse of process of the Court, preventing speedy remedy to other genuine Petitioners from this Court. Personal interest cannot be enforced through the process of this Court under Article 32 of the Constitution in the garb of a public interest litigation. Public interest litigation contemplates legal proceeding for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law. A person invoking the jurisdiction of this Court under Article 32 must approach this Court for the vindication of the fundamental rights of affected persons and not for the purpose of vindication of his personal grudge or enmity. It is the duty of this Court to discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extraordinary jurisdiction of this Court for personal matters under the garb of the public interest litigation.

In the *Janata Dal Vs. H.S. Chowdhary and Others*, , the Supreme Court observed:

It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding 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 rejecting at the threshold.

In *Dr. Nandjee Singh Vs. P.G. Medical Students Association and others*, , the Supreme Court ruled:

We have, therefore, not understood how the Respondent-Association could convert an individual dispute into a public interest litigation. We are of the view that cases where what is strictly an individual dispute is sought to be converted into a public interest litigation should not be encouraged.

Similar view was taken by a division Bench of this Court in *Ratnesh Kumar Singh v. The State of Bihar and Ors.* 1996 (1) PLJR 179 relevant portion of which reads as under:

In our considered opinion P.I.L is not to be taken lightly nor the same need be encouraged. It has become luxury litigation filed by a particular Petitioner with oblique motive in one form or the other. We must have positive check on the free flow of such litigation.

In our opinion, the dispute involved in the present writ petition is an individual dispute for which the students or their parents would have come forward and filed writ petition. In the circumstances, in our opinion, the present petition in the form of P.I.L is not maintainable.

We have to be conscious in entertaining a P.I.L. and we must ascertain whether it

is genuine, bona fide and unavoidable litigation, otherwise traditional litigation of the High Court would suffer and this Court would usurp the function of the administrative and executive.

10. Second contention of the learned Advocate General is that this writ petition is barred by Section 14 of the Administrative Tribunals Act (for short "the Act"), According to him, Chief Secretary, Director General of Police, Home Commissioner District Magistrates, Superintendents of Police and others are member of All India Service and therefore, this Court has no jurisdiction to interfere under Article 226 of the Constitution. Learned Counsel for the Petitioners contended that it is true that individual claim of these officers is barred by Section 14 of the Act but not the Public Interest Litigation. According to him, these officers cannot approach the High Court under Article 226 of the Constitution directly in view of Section 14 of the Act but their transfer orders can be challenged by way of Public Interest Litigation.

11. In order to appreciate this argument of the learned Counsel, relevant portion of Section 14 of the Act is quoted below:

14(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court) in relation to-

(a) recruitment, and matters concerning, recruitment, to any All India Service or to any Civil Service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being in, either case, a post filled by a civilian.

A plain reading of Section 14 shows that this Court has no jurisdiction to interfere with the service matters relating to All India Service and Central Services etc. directly under Article 226 of the Constitution. The aggrieved person has to first approach the Central Administrative Tribunal for the redress of his or her grievance. The claim of the learned Counsel for the Petitioners, that although the transfer of these officers cannot be challenged by them directly under, Article 226 of the Constitution, it may be done by way of Public Interest Litigation, is wholly misconceived. Public Interest Litigation simply relaxes the rule of locus standi but it cannot confer or enlarge jurisdiction of this Court.

12. Third contention of the learned Advocate General is that the officers who are likely to be adversely affected in case of success of the writ petition, have not been made party in the writ petition.

13. We find substance in this argument of the learned Counsel. Firstly, the officers, who according to the Petitioners have been adversely affected should have approached the appropriate court or authority for the redress of their grievance but even assuming that their grievance can be redressed at the instance of the Petitioners, it was incumbent on the Petitioners to implead the

persons who according to them, have been benefitted in the process. In other words, the officers who have been allegedly benefitted by the impugned orders and are likely to be vitally affected in case of success of the writ petition are necessary parties to the writ petition and the writ petition is liable to be dismissed on this ground alone. Our this view finds support from the decisions of the Supreme Court in Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar, ; in Prabodh Verma and Ors. v. State of Uttar Pradesh and Ors. 1985 (2) SLR 714 and in Dr. J.N Banavalikar v. Municipal Corporation of Delhi and Anr. AIR 1996 S.C. 326.

14. Now we take up the base of the Petitioners on merit. Learned Counsel for the Petitioners while conceding that it is prerogative of the State Government to transfer its employee, has contended that the impugned orders are vitiated by malice in law. According to him, although the Petitioners have not impleaded any person or authority in individual capacity nor have they given specific particular of malice, there is sufficient materials on record from which it can be inferred that the transfer orders are vitiated by malice in law. In other words, although he has not specifically pleaded any notice against any person but the chain of circumstances unfolded in the writ petition are sufficient to prove that these transfer orders are vitiated by malice in law. 15. We find no substance in this argument of the learned Counsel. It is now well settled that striking down any act for mala fide exercise of power is a judicial reserve power exercised rarely. The charge of. mala fides against public bodies and authorities is easily made than made out. This being so, in absence of. specified pleading with particular of mala fide the allegations cannot be entertained. Moreover, mala fides can not be easily presumed on the basis of mere surmises or suspicion. Heavy burden lies on the person who challenges the bona fides of the public authority or who contends that the authority had acted outside its power, to establish his case on the cogent evidence.

16 According to the learned Counsel for the Petitioners mid-term poll to Lok Sabha became a certainty on 25.4.1999 when Ms. Sonia Gandhi, the President to Indian, National Congress, conveyed to the President that she did not have sufficient number to form Government and, therefore, the State Government was not legally justified in making such large scale transfers. In other words, the State Government on realising the elections to the Lok Sabha was imminent, decided to transfer officers of its choice to manipulate the ensuing elections.

17. As. stated above no foundation has been laid in the writ petition to substantiate this argument of the learned Counsel. Only effort has been made to persuade us to hold that the entire exercise of transfer is vitiated by malice in law. It is true that Ms. Sonia Gandhi intimated the President on 25.4.1999 that she was not in a position to form Government but it cannot be claimed that all efforts to form alternative Government came to an end. Under the Constitution, the President is required to explore all possibilities to form alternative Government and avoid mid-term poll of the Lok Sabha. This being so, it cannot

be claimed that the entire process of forming alternative Government came to an end on 25.4.1999 when Ms. Sonia Gandhi conveyed to the President that she was not in a position to form Government. The President could have invited the leader of third front to explore possibility of forming alternative Government in order to avoid mid- term poll and on his failure to form Government, he could have also asked the outgoing Prime Minister to explore possibility of forming a Government. As a matter of fact, ruling alliance has been repeatedly saying that there was no bar in the Constitution to invite the leader who has been defeated on the floor of the House again to explore possibility of forming a Government. Moreover, the President had in fact invited the outgoing Prime Minister after Ms. Sonia Gandhi showed her inability to form Government. It seems that it is only when the outgoing Prime Minister showed his inability to form Government, the President asked him to send recommendation of the Cabinet for dissolution of the Lok Sabha and thereafter. on 26.4.1999 the Union Cabinet recommended for dissolution of the Lok Sabha. Acting on the recommendation of the Union Cabinet, the President dissolved the Lok Sabha in the night of 26.4.1999. In view of the admitted position that decision to dissolve the Lok Sabha was taken on 26.4.199, it cannot be reasonably claimed that election to the Lok Sabha had become imminent on 25.4.1999 when Ms. Sonia Gandhi conveyed to the President that she was not in a position to form alternative Government.

18. In our opinion, no inference of malice in law can be drawn on the basis of materials on record. More so, when most of the officers transferred on 25.4.1999 including the Chief Secretary, Director General of Police, and Home Commissioner were those who were posted by the Governor in the night of imposition of the President Rule.

19. Learned Advocate General also contended that on the own case of the Petitioners, according to the executive instructions, Government employees are transferred in the months of May-June and, therefore, no motive can be attributed to the State Government for preponing the transfer by a week or so.

20. In view of our finding that the impugned orders are not vitiated by malice, it is not necessary for us to go into this aspect of the matter.

21. The impugned orders do not suffer from any error much less an error apparent on the face of record which may warrant interference by this Court under Article 226 of the Constitution.

22. The writ petition is devoid of merit and is accordingly dismissed.