
(2015) 10 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : CWP No. 405 of 2014

Satish Kumar Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-10-2015

Acts Referred:

Constitution of India, 1950 — Article 21, 32

Citation : (2015) 10 SHI CK 0003

Hon'ble Judges : Mansoor Ahmad Mir, C.J; Tarlok Singh Chauhan, J

Bench : Division Bench

Advocate : Ashok Sharma, Assistant Solicitor General of India and Desh Raj Thakur, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J—The petitioner who is a permanent resident of West Bengal has filed this petition purportedly in public interest whereby the following substantive reliefs have been claimed:--

"a) That impugned orders dated 18.01.2013, Annexure: P-13 and orders dated 27.11.2013, Annexure: P-33, may very kindly be quashed and set aside, being contrary to all norms of justice with directions to the respondents not to give effect to the same, if given, the same again be brought under the direct control of CTSA, as earlier was being run;

b) That transfer of moveable/immovable properties in the State of Himachal Pradesh from CTSA to CTA being contrary to section 118 of the Himachal Pradesh Tenancy & Land Reforms Act, is otherwise not sustainable in the eyes of law and liable to be quashed and set aside, for which humble petitioner respectfully prays for;

c) That directions may be given to the foreigners added as respondents in the writ petition not to run a parallel Government in the Union Territory of India. In the alternative, directions may be given to the Government of India not to allow

the foreigners to run parallel Government in the Union Territory of India from Dharamshala, District Kangra, H.P;

d) That directions may be given to respondent No. 1 to get the matter inquired into with respect to illegal issuance of order/letter dated 18.01.2013, which is totally contrary to all norms of justice and the very Constitution of India, with directions to place on record of this case the report of said inquiry, as is got conducted;

e) That there being conversion of religion of minor kids, as is clear from perusal of Annexure: P-34, is hit by the provisions of the Himachal Pradesh Freedom of Religion Act, 2006. Said respondents are liable to be punished suitably in accordance with law as per provisions of the Act. Categorical directions are liable to be issued to the respondents to desist from doing so in future, for which humble petitioner respectfully prays for;

f) That transfer, vide letter dated 27.11.2013, is only a transfer of first phase and transfer of properties of remaining schools is in offing in second phase. Respondents may very kindly be restrained from doing so permanently, in the interest of law and justice."

2. Respondents No. 8, 9 and 14 have raised preliminary objection regarding the very maintainability of the petition on the ground that petition seeking similar reliefs was in fact filed before the Calcutta High Court by Smt. Kajal Ghosh (Singh), who is none other than the wife of the present petitioner, which was dismissed on merits and the instant petition, therefore, is not maintainable.

3. In such circumstances, we have to first decide the question of maintainability and only if we hold this petition to be maintainable, then alone we will go into the merits of the case.

We have heard the petitioner and the learned counsel for the respondents and have gone through the records of the case.

4. The petitioner has vehemently argued that the decision rendered by the Calcutta High Court has no bearing to the facts of this case for the simple reason that the petition before that Court had not been filed by him but by his wife and further that the issues raised therein had not been appreciated by the Calcutta High Court in their right perspective and, therefore, all the issues are thus open to judicial scrutiny before this Court.

5. The petitioner claims to have filed this petition as Pro Bono Publico, whereas, the respondents have challenged the locus-standi by contending that the petition has not been filed in public interest, but has been filed to espouse private interest.

6. It is settled law that before entertaining public interest litigation, the Courts have to be satisfied about bonafide of the petitioner and it is the cause of the public which he seeks to espouse through such litigation. This Court is repeatedly

coming across litigations under the brand name of public interest litigation, whereas, the same is used for suspicious products of mischief. This Bench has repeatedly warned against such mis-adventure. Reference in this regard can conveniently be made to CWP No. 7249 of 2010 titled as Devender Chauhan Jaita versus State of Himachal Pradesh and others, decided on 03.12.2014, being lead case, CWP No. 9480 of 2014 titled as Vijay Kumar Gupta versus State of Himachal Pradesh and others, decided on 09.01.2015, CWP No. 2775 of 2015 titled as Anurag Sharma and another versus State of Himachal Pradesh and others, decided on 07.07.2015. It may be pertinent to observe here that the decision in CWP No. 9480 of 2014 was assailed before the Hon'ble Supreme Court by way of SLP(C) No. 8459 of 2015 and the same was dismissed in limine on 23.03.2015.

7. Even the Hon'ble Supreme Court has viewed the abuse of public interest litigation very seriously and in this regard reference can conveniently be made to the judgment of the Hon'ble Supreme Court in State of Uttaranchal Vs. Balwant Singh Chaufal and Others, AIR 2010 SC 2550 : (2010) 1 JT 329 : (2010) 1 SCALE 492 : (2010) 3 SCC 402 : (2010) 1 SCC(L&S) 807 : (2010) 2 SCR 678 : (2010) 1 SLR 581 : (2010) 2 UJ 511 : (2011) AIRSCW 2486 : (2010) 6 Supreme 569 , where after noticing the instances of misuse of public interest litigation, the necessity to check such abuse was emphasized. It was held:--

"143. Unfortunately, of late, it has been noticed that such an important jurisdiction which has been carefully carved out, created and nurtured with great care and caution by the courts, is being blatantly abused by filing some petitions with oblique motives. We think time has come when genuine and bona fide public interest litigation must be encouraged whereas frivolous public interest litigation should be discouraged. In our considered opinion, we have to protect and preserve this important jurisdiction in the larger interest of the people of this country but we must take effective steps to prevent and cure its abuse on the basis of monetary and non- monetary directions by the courts.

144. In BALCO Employees Union (Regd.) Vs. Union of India and Others, AIR 2002 SC 350 : (2002) 108 CompCas 193 : (2002) 1 CompLJ 205 : (2001) 10 JT 466 : (2002) 1 LLJ 550 : (2001) 8 SCALE 541 : (2002) 2 SCC 333 : (2002) 35 SCL 182 : (2002) 2 SCT 12 : (2001) AIRSCW 5135 : (2001) 8 Supreme 660 , this Court recognized that there have been, in recent times, increasing instances of abuse of public interest litigation. Accordingly, the court has devised a number of strategies to ensure that the attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. Firstly, the Supreme Court has limited standing in PIL to individuals "acting bonafide." Secondly, the Supreme Court has sanctioned the imposition of "exemplary costs" as a deterrent against frivolous and vexatious public interest litigations. Thirdly, the Supreme Court has instructed the High Courts to be more selective in entertaining the public interest litigations.

145. In S.P. Gupta Vs. President of India and Others, AIR 1982 SC 149 : (1981)

1 SCC 87 Supp : (1982) 2 SCR 365 this Court has found that this liberal standard makes it critical to limit standing to individuals "acting bona fide. To avoid entertaining frivolous and vexatious petitions under the guise of PIL, the Court has excluded two groups of persons from obtaining standing in PIL petitions. First, the Supreme Court has rejected awarding standing to "meddlesome interlopers". Second, the Court has denied standing to interveners bringing public interest litigation for personal gain.

146. In *Chhetriya Pardushan Mukti Sangharsh Samiti Vs. State of U.P. and others*, AIR 1990 SC 2060 : (1990) 3 JT 685 : (1990) 3 SCALE 332 : (1990) 4 SCC 449 : (1990) 3 SCR 739 : (1990) 2 UJ 566 the Court withheld standing from the applicant on grounds that the applicant brought the suit motivated by enmity between the parties.

147. Thus, the Supreme Court has attempted to create a body of jurisprudence that accords broad enough standing to admit genuine PIL petitions, but nonetheless limits standing to thwart frivolous and vexatious petitions. The Supreme Court broadly tried to curtail the frivolous public interest litigation petitions by two methods-one monetary and second, non-monetary.

148. The first category of cases is that where the court on filing frivolous public interest litigation petitions, dismissed the petitions with exemplary costs. In *Neetu Vs. State of Punjab and Others*, AIR 2007 SC 758 : (2007) 1 JT 452 : (2007) 1 SCALE 168 : (2007) 10 SCC 614 : (2007) 1 SCR 223 , the Court concluded that it is necessary to impose exemplary costs to ensure that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts.

149. In *S.P. Anand Vs. H.D. Deve Gowda and others*, (1996) 8 AD 459 : AIR 1997 SC 272 : (1996) 10 JT 274 : (1996) 8 SCALE 191 : (1996) 6 SCC 734 : (1996) 8 SCR 486 Supp : (1997) AIRSCW 18 : (1996) 8 Supreme 1 , the Court warned that (SCC p. 745, para 18) it is of utmost importance that those who invoke the jurisdiction of this Court "seeking a waiver of the locus standi rule must exercise restraint in moving the Court by not plunging in areas wherein they are not well-versed".

150. In *Sanjeev Bhatnagar Vs. Union of India (UOI) and Others*, AIR 2005 SC 2841 : (2005) 5 JT 323 : (2005) 5 SCC 330 : (2005) 1 SCR 371 Supp : (2005) AIRSCW 3201 : (2005) 4 Supreme 149 , this Court went a step further by imposing a monetary penalty against an Advocate for filing a frivolous and vexatious PIL petition. The Court found that the petition was devoid of public interest, and instead labelled it as "publicity interest litigation." Thus, the Court dismissed the petition with costs of Rs. 10,000/-.

151. Similarly, in *Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others*, AIR 2005 SC 540 : (2004) 5 CTC 748 : (2004) 10 JT 561 : (2004) 10 SCALE 415 : (2005) 1 SCC 590 , the Supreme Court affirmed the High Court's monetary penalty against a member of the Bar for filing a frivolous and vexatious

PIL petition. This Court found that the petition was nothing but a camouflage to foster personal dispute. Observing that no one should be permitted to bring disgrace to the noble profession, the Court concluded that the imposition of the penalty of Rs. 25,000 by the High Court was appropriate. Evidently, the Supreme Court has set clear precedent validating the imposition of monetary penalties against frivolous and vexatious PIL petitions, especially when filed by advocates.

152. This Court, in the second category of cases, even passed harsher orders. In *Charan Lal Sahu and Others Vs. Giani Zail Singh and Another*, AIR 1984 SC 309 : (1983) 2 SCALE 961 : (1984) 1 SCC 390 : (1984) 2 SCR 6 : (1984) 16 UJ 873 , the Supreme Court observed that, "we would have been justified in passing a heavy order of costs against the two petitioners" for filing a "light-hearted and indifferent" PIL petition. However, to prevent "nipping in the bud a well-founded claim on a future occasion," the Court opted against imposing monetary costs on the petitioners." In this case, this Court concluded that the petition was careless, meaningless, clumsy and against public interest. Therefore, the Court ordered the Registry to initiate prosecution proceedings against the petitioner under the Contempt of Courts Act. Additionally, the court forbade the Registry from entertaining any future PIL petitions filed by the petitioner, who was an advocate in that case.

153. In *J. Jayalalitha Vs. Government of Tamil Nadu and Others*, AIR 1999 SC 2330 : (1999) 9 JT 387 : (1999) 1 SCC 53 : (1999) AIRSCW 2427 , this court laid down that public interest litigation can be filed by any person challenging the misuse or improper use of any public property including the political party in power for the reason that interest of individuals cannot be placed above or preferred to a larger public interest.

154. This court has been quite conscious that the forum of this court should not be abused by any one for personal gain or for any oblique motive. In *BALCO* (supra), this court held that the jurisdiction is being abused by unscrupulous persons for their personal gain. Therefore, the court must take care that the forum be not abused by any person for personal gain.

155. In *Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others*, AIR 2005 SC 540 : (2004) 5 CTC 748 : (2004) 10 JT 561 : (2004) 10 SCALE 415 : (2005) 1 SCC 590 this court expressed its anguish on misuse of the forum of the court under the garb of public interest litigation and observed (SCC p.595, para 12) that the

"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 armoury of law for delivering social justice to the citizens.... The court must not allow its process to be abused for oblique considerations."

156. In *Thaware's* case (supra), the Court encouraged the imposition of a non-

monetary penalty against a PIL petition filed by a member of the bar. The Court directed the Bar Councils and Bar Associations to ensure that no member of the Bar becomes party as petitioner or in aiding and/or abetting files frivolous petitions carrying the attractive brand name of Public Interest Litigation. This direction impels the Bar Councils and Bar Associations to disbar members found guilty of filing frivolous and vexatious PIL petitions.

157. In *Holicow Pictures Pvt. Ltd. Vs. Prem Chandra Mishra and Others*, AIR 2008 SC 913 : (2008) 1 CTC 711 : (2007) 14 SCALE 10 : (2007) 12 SCR 1068 , this Court observed as under: (SCC pp. 287d-288a, para 10)

"10."....12. It is depressing to note that on account of such trumpety 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 release 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".

158. The Court cautioned by observing that: (*Holicow Pictures Pvt. Ltd. Vs. Prem Chandra Mishra and Others*, AIR 2008 SC 913 : (2008) 1 CTC 711 : (2007) 14 SCALE 10 : (2007) 12 SCR 1068)

"10. ".....13. 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. ...

* * *

15. 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 meddlesome 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."

8. In Central Electricity Supply Utility of Odisha Vs. Dhobei Sahoo and Others, (2013) 11 AD 377 : AIR 2014 SC 246 : (2013) 14 JT 522 : (2013) 13 SCALE 477 : (2014) 1 SCC 161 : (2014) 1 SCC(L&S) 1 , the Hon"ble Supreme Court felt the need to revisit certain authorities pertaining to public interest litigation, its abuses and the way sometimes the courts perceive the entire spectrum. It was observed as under:--

"24. Ordinarily, after so stating we would have proceeded to scan the anatomy of the Act, the Rules, the concept of the Scheme under the Act and other facets but we have thought it imperative to revisit certain authorities pertaining to public interest litigation, its abuses and the way sometimes the courts perceive the entire spectrum. It is an ingenious and adroit innovation of the judge-made law within the constitutional parameters and serves as a weapon for certain purposes. It is regarded as a weapon to mitigate grievances of the poor and the marginalized sections of the society and to check the abuse of power at the hands of the Executive and further to see that the necessitous law and order situation, which is the duty of the State, is properly sustained, the people in impecuniosity do not die of hunger, national economy is not jeopardized; rule of law is not imperiled; human rights are not endangered, and probity, transparency and integrity in the governance remain in a constant state of stability. The use of the said weapon has to be done with care, caution and circumspection. We have a reason to say so, as in the case at hand there has been a fallacious perception not only as regards the merits of the case but also

there is an erroneous approach in issuance of direction pertaining to recovery of the sum from the holder of the post. We shall dwell upon the same at a later stage.

25. As advised at present, we may refer to certain authorities in the field in this regard. In *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, AIR 1984 SC 802 : (1984) LabIC 560 : (1983) 2 SCALE 1151 : (1984) 3 SCC 161 : (1984) 2 SCR 67 : (1984) 16 UJ 29 Bhagwati, J., (as his Lordship then was) had observed thus: (SCC p.183, para 9)

"9....When the Court entertains public interest litigation, it does not do so in a caviling spirit or in a confrontational mood or with a view to tilting at executive authority or seeking to usurp it, but its attempt is only to ensure observance of social and economic rescue programme, legislative as well as executive, framed for the benefit of the have-nots and the handicapped and to protect them against violation of their basic human rights, which is also the constitutional obligation of the executive. The Court is thus merely assisting in the realization of the constitutional objectives."

26. In *Dr D.C. Wadhwa and Others Vs. State of Bihar and Others*, AIR 1987 SC 579 : (1987) 1 JT 70 : (1986) 2 SCALE 1174 : (1987) 1 SCC 378 : (1987) 1 SCR 798 the Constitution Bench, while entertaining a petition under Article 32 of the Constitution on behalf of the petitioner therein, observed that it is the right of every citizen to insist that he should be governed by laws made in accordance with the Constitution and not laws made by the executive in violation of the constitutional provisions. It has also been stated therein that the rule of law constitutes the core of our Constitution and it is the essence of rule of law that the exercise of the power by the State whether it be the legislature or the executive or any other authority should be within the constitutional limitation and if any practice is adopted by the executive which is in flagrant violation of the constitutional limitations, a member of the public would have sufficient interest to challenge such practice and it would be the constitutional duty of the Court to entertain the writ petition.

27. In *Neetu Vs. State of Punjab and Others*, AIR 2007 SC 758 : (2007) 1 JT 452 : (2007) 1 SCALE 168 : (2007) 10 SCC 614 : (2007) 1 SCR 223 the Court has opined that it is shocking to note that Courts are flooded with large number of so called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigation. Commenting on entertaining public interest litigations without being careful of the parameters by the High Courts the learned Judges observed as follows: (SCC p. 617, para 5)

"5. "16....Though the parameters of public interest litigation have been indicated by this Court in large number of cases, yet unmindful of the real intentions and objectives. High Courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. (*Ashok Kumar Pandey Vs. The State of West Bengal and Others*,

AIR 2004 SC 280 : (2003) 9 JT 140 : (2003) 9 SCALE 741 : (2004) 3 SCC 349 : (2011) 1 SCC(Cri) 865 : (2003) 5 SCR 716 Supp)"

Thereafter, giving a note on caution, the Court stated:--

"6. "12. 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 armoury of law for delivering social justice to the citizens." (Dr. B. Singh Vs. Union of India (UOI) and Others, AIR 2004 SC 1923 : (2004) 101 FLR 575 : (2004) 3 JT 127 : (2004) 3 SCALE 224 : (2004) 3 SCC 363 : (2004) 2 SCR 1061 : (2004) AIRSCW 1494 : (2004) 2 Supreme 387)"

28. In State of Uttaranchal Vs. Balwant Singh Chaufal and Others, AIR 2010 SC 2550 : (2010) 1 JT 329 : (2010) 1 SCALE 492 : (2010) 3 SCC 402 : (2010) 1 SCC(L&S) 807 : (2010) 2 SCR 678 : (2010) 1 SLR 581 : (2010) 2 UJ 511 : (2011) AIRSCW 2486 : (2010) 6 Supreme 569

this Court adverted to the growth of public interest litigations in this country, and the view expressed in various PILs and the criticism advanced and eventually conceptualized the development which is extracted below: (SCC p. 427, para 43)

"43.....We deem it appropriate to broadly divide the public interest litigation in three phases:

? Phase I.--It deals with cases of this Court where directions and orders were passed primarily to protect fundamental rights under Article 21 of the marginalized groups and sections of the society who because of extreme poverty, illiteracy and ignorance cannot approach this Court or the High Courts.

? Phase II.--It deals with the cases relating to protection, preservation or ecology, environment, forests, marine life, wildlife, mountains, rivers, historical monuments etc. etc.

? Phase III.--It deals with the directions issued by the Courts in maintaining the probity, transparency and integrity in governance."

29. In Bholanath Mukherjee and Others Vs. R.K. Mission V. Centenary College and Others, (2011) 5 JT 43 : (2011) 4 SCALE 862 : (2011) 5 SCC 464 : (2011) 2 SCC(L&S) 30 : (2011) 2 UJ 1545 : (2011) AIRSCW 2960 it has been laid down that public interest litigation would not be maintainable in service law cases.

30. In Dr. Duryodhan Sahu and Others Etc. Etc. Vs. Jitendra Kumar Mishra and Others Etc. Etc., (1998) 6 AD 417 : AIR 1999 SC 114 : (1999) 87 CLT 86 : (1998) 3 CTC 97 : (1998) 5 JT 645 : (1998) 2 LLJ 1013 : (1998) 4 SCALE 643 : (1998) 7 SCC 273 : (1998) SCC(L&S) 1802 : (1998) 1 SCR 77 Supp : (1999) 1 SLJ 205 : (1998) AIRSCW 3467 : (1998) 6 Supreme 524 a three-Judge, Bench posed a question whether the administrative tribunals constituted under the Administrative Tribunals Act, 1985 can entertain a public interest litigation. A

post of lecturer was created in a Government Medical College recognized by the Medical Council of India and the State Government requested the Public Service Commission to recommend a suitable candidate from the reserved list. At that stage, a third party described himself as the Secretary of a particular Surakhya Committee, filed an original application for quashing the Government order creating the post of the teacher. A grievance was also put forth that the post was not advertised. The tribunal restrained the appointment of the beneficiary, the appellant before this Court. The learned Judges opined that the administrative tribunal constituted under the said Act cannot entertain a public interest litigation at the instance of a total stranger. While so stating the three-Judge Bench opined that as the prayer was for quashment of the creation of post itself and preventing the authorities and for preventing the Government from appointing any candidate as Lecturer, the prayer would not come in the sphere of quo warranto.

31. Thus, from the aforesaid authorities it is quite vivid that the public interest litigation was initially evolved as a tool to take care of the fundamental rights under Article 21 of the Constitution of the marginalized sections of the society who because of their poverty and illiteracy could not approach the court. In quintessence it was initially evolved to benefit the have-nots and the handicapped for protection of their basic human rights and to see that the authorities carry out their constitutional obligations towards the marginalized sections of people who cannot stand up on their own and come to court to put forth their grievances. Thereafter, there has been various phases as has been stated in *Balwant Singh Chauhal* (supra). It is also perceptible that court has taken note of the fact how the public interest litigations have been misutilized to vindicate vested interests for the propagated public interest. In fact, as has been seen, even the people who are in service for their seniority and promotion have preferred public interest litigations. It has also come to the notice of this Court that some persons, who describe themselves as *pro bono publico*, have approached the court challenging grant of promotion, fixation of seniority, etc. in respect of third parties."

9. The issue regarding public interest has elaborately been dealt with by this Bench in CWP No. 9480 of 2014, titled *Vijay Kumar Gupta versus State of Himachal Pradesh and others*, decided on 09.01.2015 and after taking into consideration the entire law on the subject, it was concluded as follows:--

"29. From the aforesaid exposition of law, it can safely be concluded that the Court would allow litigation in public interest only if it is found:--

(i) That the impugned action is violative of any of the rights enshrined in Part III of the Constitution of India or any other legal right and relief is sought for its enforcement;

(ii) That the action complained of is palpably illegal or malafide and affects the group of persons who are not in a position to protect their own interest or on

account of poverty, incapacity or ignorance;

(iii) That the person or a group of persons were approaching the Court in public interest for redressal of public injury arising from the breach of public duty or from violation of some provision of the Constitutional law;

(iv) That such person or group of persons is not a busy body or a meddlesome interloper and have not approached with mala fide intention of vindicating their personal vengeance or grievance;

(v) That the process of public interest litigation was not being abused by politicians or other busy bodies for political or unrelated objective. Every default on the part of the State or Public Authority being not justiciable in such litigation;

(vi) That the litigation initiated in public interest was such that if not remedied or prevented would weaken the faith of the common man in the institution of the judicial and the democratic set up of the country;

(vii) That the State action was being tried to be covered under the carpet and intended to be thrown out on technicalities;

(viii) Public interest litigation may be initiated either upon a petition filed or on the basis of a letter or other information received but upon satisfaction that the information laid before the Court was of such a nature which required examination;

(ix) That the person approaching the Court has come with clean hands, clean heart and clean objectives;

(x) That before taking any action in public interest the Court must be satisfied that its forum was not being misused by any unscrupulous litigant, politicians, busy body or persons of groups with mala fide objective or either for vindication of their personal grievance or by resorting to black-mailing or considerations extraneous to public interest."

10. In the above background, this Court is required to first satisfy itself regarding the credentials of the petitioner, the prima-facie correctness of the information given by him because after all the attractive brand name of public interest litigation cannot be used for suspicious products of mischief. It has to be aimed at redressal of genuine public wrong or public injury and not publicity-oriented or founded on personal vendetta or private motive. The process of the Court cannot be abused for oblique considerations by masked phantoms who monitor at times from behind. The common rule of locus-standi in such cases is relaxed so as to enable the Court to look into the grievances complained of on behalf of the poor, deprive, deprivation, illiterate and the disabled and who cannot vindicate the legal wrong or legal injury caused to them for any violation of any constitutional or legal right. But, then 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 nor does it entertain petitions which are motivated.

After all, public interest litigation is not a pill or panacea for all wrongs. It is essentially meant to protect basic human rights of the weak and disadvantaged. 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 public interest seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering justice to the citizens. Courts must do justice by promotion of good faith and prevent law from crafty invasions. It is for this reason that the Court must maintain social balance by interfering for the sake of justice and refuse to entertain where it is against the social justice and public good.

11. Adverting to the facts, it would be seen that prior to the filing of the instant petition, the wife of the petitioner had already approached the learned Calcutta High Court by filing a writ petition styled as a public interest litigation wherein she had sought the following reliefs:--

"(a) A writ of or in the nature of Mandamus commanding the respondents to show cause as to why the impugned order of transfer of movable and immovable property of Central Tibetan Schools Administration (CTSA), Government of India to Department of Education, Central Tibetan Administration, Dharamsala, Himachal Pradesh vide No. F. No. 22-12/2012-CTSA(P/E) dated 27th November, 2013 should not be quashed and/or set aside;

(b) A writ of or in the nature of Mandamus commanding the respondents No. 1 to 7 to implement the rules applicable for the foreigners who are not entitled to acquire or transfer of immovable property in India in terms of the Foreign Exchange Management (Acquisition And Transfer of Immovable Property In India) Regulations, 2000, Notification No. FEMA 21/2000-RB dated 3rd May 2000 without the prior permission of the Reserve Bank of India, other than lease not exceeding five years;

(c) A writ of or in the nature of Prohibition restraining the respondents from transferring the immovable properties attached to the schools under the Central Tibetan School Administration, Ministry of Human Resource Development, Government of India to the Central Tibetan Administration which is a foreign institution and also not to allow the respondent No. 10 to run parallel government within the territory of India;

(d) A writ of or in the nature of Certiorari directing the respondents to certify and transmit all relevant records of this case to this Hon'ble Court so that conscionable justice may be administered;

(e) Rule NISI in terms of prayers (a) to (d) above;

(f) An interim order of stay of operation of the impugned order vide No. F. No. 22-12/2012-CTSA (P/E) dated 27th November, 2013 issued by the Director, Central Tibetan Schools Administration, Ministry of Human Resource

Development, Government of India and also not to transfer any other properties of Central Tibetan School Administration to the Central Tibetan Administration till disposal of this instant writ application."

12. It is evident from the aforesaid that the reliefs sought in the instant petition are virtually the same as had been claimed before the learned Calcutta High Court. It would also be seen that except for inter-play of words here and there, the reliefs claimed in both the petitions are virtually the same.

13. In case, we now advert to and peruse the judgment rendered by the learned Division Bench of the Calcutta High Court, it is abundantly clear that all the issues raised in that petition have been discussed on merits and it is only thereafter that the petition was ordered to be dismissed.

14. It is also not in dispute that the order passed by the Calcutta High Court has attained finality, but as noticed above, for some strange reasons, the petitioner would still like to canvass that the issues raised therein had not been properly appreciated by that Court and were, therefore, still open for judicial scrutiny by this Court.

15. The petitioner has appeared in person and, therefore, some leverage and leniency has to be shown to him for his lack of knowledge of law, but, then he cannot be permitted to raise arguments which are legally not tenable and against judicial propriety. Admittedly, the petition before the Calcutta High Court was filed by none other, but the wife of the petitioner. Even if it is assumed that the same was in public interest, even then nothing prevented the petitioner from assailing the said order in case he was really aggrieved and felt that the same was to his prejudice. But then, under no circumstances, can the petitioner be permitted to assail the order passed by the learned Division Bench of the Calcutta High Court before this Court. Not only the Courts but even the litigants are bound by propriety, procedure and judicial discipline and, therefore, no one can be permitted to breach the same.

16. As we have already noticed, the petitioner is a permanent resident of West Bengal. Therefore, what is the special interest he has in this State and, particularly, with the Central Tibetan School Administration and Central Tibetan Administration? The answer to this is not difficult to find. The record reveals that the petitioner is a disgruntled dismissed employee of respondent No. 9 and the Central Tibetan School Administration where he worked from 01.08.1994 to 08.01.2004 as a Post Graduate Teacher (Geography). The petitioner on his appointment was initially posted at Central School for Tibetans ("CST"), Shimla, where he worked with effect from 01.08.1994 to 08.05.1998. However, there were several complaints made against him by the Principal due to which he was transferred to CST, Herbertpur, District Dehradun, Uttarakhand. Even after joining CST, Herbertpur, on 16.05.1998, the petitioner is alleged to have indulged in various anti school/organization activities resulting in initiation of disciplinary proceedings against him. The petitioner was served with a charge-sheet dated

11.07.2000 and after regular inquiry, the Disciplinary Authority imposed penalty of dismissal from service upon him vide order dated 09.01.2004.

17. All the aforesaid facts have not at all been controverted by the petitioner and, therefore, clearly establishes beyond any reasonable doubt that the process of public interest litigation has been misused by the petitioner and the instant petition has been filed only with malafide objectives and for vindication of his personal grievances on considerations that are extraneous to public interest.

18. Moreover, the petitioner has not approached this Court with clean hands, clean heart and clean objectives. The material on record goes to show that the petition though styled as public interest litigation is nothing but a camouflage to foster personal disputes. There is no real and genuine public interest involved in the litigation. Rather, as observed earlier, the petitioner has filed this petition only to settle his personal cause and satisfy his personal grudge and, therefore, the petition deserves to be thrown out on this ground alone.

19. From the aforesaid discussion, it is amply proved that the present petition is not bonafide, but is vexatious and, therefore, not maintainable. The petitioner has infact criminally wasted the valuable time of this Court which could have been better utilized for imparting justice to those, who are waiting in the queue.

20. At this stage, we may once again revert back to the judgment of the Hon''ble Supreme Court in Balwant Singh Chauhal's case (supra) wherein the Hon''ble Supreme Court observed that the malice of frivolous and vexatious petitions did not originate in India and the jurisprudence developed by the Indian Judiciary regarding the imposition of exemplary costs upon frivolous and vexatious PIL petitions was consistent with jurisprudence developed in other countries. It noticed that US Federal Courts and Canadian Courts have also imposed monetary penalties upon public interest claims regarded as frivolous. It was observed:--

"159..... In Everywoman's Health Centre Society v. Bridges (1990) 54 BCLR (2d) 273 (CA), the British Columbia Court of Appeal granted special costs against the Appellants for bringing a meritless appeal.

160. The U.S. Federal Courts too have imposed monetary penalties against plaintiffs for bringing frivolous public interest claims. Rule 11 of the Federal Rules of Civil Procedure (FRCP) permits Courts to apply an "appropriate sanction" on any party for filing frivolous claims. Federal Courts have relied on this rule to impose monetary penalties upon frivolous public interest claims.

161. For example, in Harris v. Marsh 679 F.Supp. 1204, the District Court for the Eastern District of North Carolina imposed a monetary sanction upon two civil rights plaintiffs for bringing a frivolous, vexatious, and meritless employment discrimination claim. The Court explained that "the increasingly crowded dockets of the federal courts cannot accept or tolerate the heavy burden posed by factually baseless and claims that drain judicial resources." As a deterrent against such wasteful claims, the Court levied a cost of \$83,913.62 upon two

individual civil rights plaintiffs and their legal counsel for abusing the judicial process.

162. Case law in Canadian Courts and U.S. Federal Courts exhibits that the imposition of monetary penalties upon frivolous public interest claims is not unique to Indian jurisprudence.

163. Additionally, U.S. Federal Courts have imposed non-monetary penalties upon Attorneys for bringing frivolous claims. Federal rules and case law leave the door open for such non-monetary penalties to be applied equally in private claims and public interest claims. Rule 11 of the FRCP additionally permits Courts to apply an "appropriate sanction" on Attorneys for filing frivolous claims on behalf of their clients. U.S. Federal Courts have imposed non-monetary sanctions upon Attorneys for bringing frivolous claims under Rule 11.

164. In *Frye v. Pena* 199 F.3d 1332 (Table), 1999 WL 974170, for example, the United States Court of Appeals for the Ninth Circuit affirmed the District Court's order to disbar an Attorney for having

"brought and pressed frivolous claims, made personal attacks on various government officials in bad faith and for the purpose of harassment, and demonstrated a lack of candor to, and contempt for, the court."

This judicial stance endorses the ethical obligation embodied in Rule 3.1 of the Model Rules of Professional Conduct ("MRPC"):

"3.1. a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous."

Together, the FRCP, U.S. federal case law, and the MRPC endorse the imposition of non-monetary penalties upon attorneys for bringing frivolous private claims or public interest claims.

165. In *Bar Council of Maharashtra Vs. M.V. Dabholkar and Others*, AIR 1975 SC 2092 : (1975) 2 SCC 702 : (1976) 1 SCR 306 this court was apprehensive that by widening the legal standing there may be flood of litigation but loosening the definition is also essential in the larger public interest. To arrest the mischief is the obligation and tribute to the judicial system.

166. In *S.P. Gupta v. Union of India* 1981 Supp SCC 87 the court cautioned that important jurisdiction of public interest litigation may be confined to legal wrongs and legal injuries for a group of people or class of persons. It should not be used for individual wrongs because individuals can always seek redress from legal aid organizations. This is a matter of prudence and not as a rule of law.

167. In *Chhetriya Pardushan Mukti Sangharsh Samiti Vs. State of U.P. and others*, AIR 1990 SC 2060 : (1990) 3 JT 685 : (1990) 3 SCALE 332 : (1990) 4 SCC 449 : (1990) 3 SCR 739 : (1990) 2 UJ 566 this court again emphasized that Article 32 is a great and salutary safeguard for preservation of fundamental

rights of the citizens. The superior courts have to ensure that this weapon under Article 32 should not be misused or abused by any individual or organization.

168. In Janata Dal Vs. H.S. Chowdhary and Others, AIR 1993 SC 892 : AIR 1992 SC 892 : (1993) CriLJ 600 : (1992) 3 Crimes 199 : (1992) 5 JT 213 : (1992) 2 SCALE 338 : (1992) 4 SCC 305 : (1992) 1 SCR 226 Supp , the court rightly cautioned that expanded role of courts in modern "social" state demand for greater judicial responsibility. The PIL has given new hope of justice-starved millions of people of this country. The court must encourage genuine PIL and discard PIL filed with oblique motives.

169. In Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others, (2003) 7 JT 312 : (2003) 6 SCALE 401 : (2003) 7 SCC 546 : (2003) 2 SCR 619 Supp , it was reiterated that the court must ensure that its process is not abused and in order to prevent abuse of the process, the court would be justified in insisting on furnishing of security before granting injunction in appropriate cases. The courts may impose heavy costs to ensure that judicial process is not misused.

170. In Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others, AIR 2005 SC 540 : (2004) 5 CTC 748 : (2004) 10 JT 561 : (2004) 10 SCALE 415 : (2005) 1 SCC 590 this court again cautioned and observed that the court must look into the petition carefully and ensure that there is genuine public interest involved in the case before invoking its jurisdiction. The court should be careful that its jurisdiction is not abused by a person or a body of persons to further his or their personal causes or to satisfy his or their personal grudge or grudges. The stream of justice should not be allowed to be polluted by unscrupulous litigants.

171. In Neetu Vs. State of Punjab and Others, AIR 2007 SC 758 : (2007) 1 JT 452 : (2007) 1 SCALE 168 : (2007) 10 SCC 614 : (2007) 1 SCR 223 this court observed that under the guise of redressing a public grievance the public interest litigation should not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature.

172. In Holicow Pictures Pvt. Ltd. Vs. Prem Chandra Mishra and Others, AIR 2008 SC 913 : (2008) 1 CTC 711 : (2007) 14 SCALE 10 : (2007) 12 SCR 1068 this court observed that the judges who exercise the jurisdiction should be extremely careful to see that behind the beautiful veil of PIL, an ugly private malice, vested interest and/or publicity- seeking is not lurking. The court should ensure that there is no abuse of the process of the court."

21. Since the petitioner has abused the process of this Court to satisfy his personal grudge thereby polluting the stream of justice, he has made himself liable for imposition of heavy costs. Accordingly, this petition is dismissed with costs of Rs. 1,00,000/- to be paid by the petitioner to the H.P. State Legal Services Authority. Pending, application(s), if any, also stand disposed of. The Registry is directed to send a copy of this judgment to the petitioner and the Member Secretary, H.P. State Legal Services Authority.