

(1994) 03 MAD CK 0112

In the Madras High Court

Case No : Writ Petition No. 15819 of 1993

Shri K. Ramamurthy

APPELLANT

Vs

The Tamil Nadu Electricity Board and Others

RESPONDENT

Date of Decision : 30-03-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 32

Citation : (1994) 03 MAD CK 0112

Hon'ble Judges : Srinivasan, J;Abdul Hadi, J

Bench : Division Bench

Advocate : G. Ramaswamy for D.W. Stewart, for the Appellant; Kapil Sipal for C.S. Krishnamurthy and Man Mohan, for 1st Respondent, P. Sathasivam, Spl. Govt. Pleader (Writs) for Respondents 2 and 3, V.T. Gopalan, Sr. Central Govt. Standing Counsel for K. Ramakrishna Reddy, Addl. Central Govt. Standing Counsel for 4th Respondent and K. Govindarajan, Muthukumaraswamy, N. Rosi Naidu, K. Ravindranath and K. Ramamurthy, for R. Thamocharan, A. Shanmukham, T.K. Seshadri, K. Sampth, S.A. Rajan and R. Balaji, for the Respondent

Final Decision : Dismissed

Judgement

Srinivasan, J.—This is a Public Interest Litigation filed by a Member of Parliament challenging the validity of a tender floated by the Tamil Nadu Electricity Board, which is the first Respondent and award of contracts pursuant thereto with respect to the import of two million tonnes of coal from abroad. The prayer in the writ petition is for issue of a writ of declaration declaring that the tender process of the first Respondent relating to its tender "Specification -Coal 10 dated 12-2-1993" and the consequential award of contracts as illegal and unenforceable by calling for all the records pertaining to the said tender of the first Respondent and the files of Respondents 2 and 3 and passing such further orders as deemed fit.

2. In the affidavit filed in support of the petition, the following allegations are made: The first Respondent has acted in violation of basic principles of tender

system resulting in heavy loss to the public exchequer about 300 crores of tax payers" money and that too in very valuable foreign exchange is involved in the transactions made by the first Respondent with the blessings of the Government of Tamil Nadu. It is in the public interest that the said amount is protected from the unlawful and illegal decisions and actions of the administrative authorities. Deliberate and mala fide relaxation of tender conditions while awarding contracts and extraordinary efforts taken to keep out suppliers of high quality coal and to award contracts to suppliers of inferior quality coal and the various manipulations done to choose certain suppliers of Indonesian coal of poor quality, are some of the illegalities committed by the first Respondent with the approval of the Government of Tamil Nadu. By its communication dated 12-2-1993, the first Respondent called for tenders specifying certain terms and conditions with regard to the quality, contents and supply of coal besides penalty in certain cases and rejection in certain other cases etc. The last date for receipt of tender was 10-3-1993. On that date it was opened, 16 companies had participated, out of which 8 companies were approved for consideration. After processing the tender for four months, the first Respondent made firmwise distribution of quantity of coal on 16-6-1993 and forwarded the same for the approval of the Government of Tamil Nadu. While 15.15 lakh tonnes of coal were allocated in favour of Indonesian coal from two mines viz., P.T Adaro and P.T. Berau through five suppliers, the balance of 4.85 lakh tonnes were given for Australian coal from three mines/suppliers. The Government approved of the same and issued letter D. 198 dated. 12-7-1993. The technical specifications for commercial terms in the tender have been made out clumsily with an ulterior design to accommodate only a few companies and to score away prospective companies well established and experienced in the line of trade. The tender failed to differentiate between the superior and inferior coal by not providing premium or bonus as is being practiced internationally for superior quality coal. This infomercial and unethical approach was adopted by the first Respondent deliberately despite a protest note from the Secretary (Public Works Department). It has vitiated the entire system of tender, as it was done deliberately and mala fide to keep out suppliers of higher quality coal and to favor suppliers of lesser quality coal. Indonesian coal from two mines has been accepted by the first Respondent, which is extremely divergent from the parameters specified in the tender. Offer of supply of coal from the same mine has been accepted from some tenderness, but rejected with reference to others without reason. Evaluation norms were introduced only for internal application but not for actual settlement of payment, which is highly discriminatory as it has totally distorted the value of the coal being offered. The agenda for the meeting on 19-4-1993 fraudulently declared two tenderness viz., P.T. Berau and P.T. Prima Com-exindo of Indonesian Coals as L1 and L2 at the evaluated price by adoption of wrong formula without proper loading penalty for deviation. When the Secretary objected to this, the issue was deferred and the same L1 and L2 were declared as L10 and L9 in the supplementary note dated 26-4-1993, which was adopted in the Board Meeting on 7-5-1993. Similar blatant manipulations were made in the matter of evaluation. The tender terms were

also modified at the time of awarding contracts, thus offending the provisions of Article 14 of the Constitution. The penalties avoided would come to Rs. 53.59 crores and it is a direct loss to the State. After awarding contract to one Alagendran, it was transferred to M/s. Sintex International Trading House Private Limited, Australia in spite of the fact that the proposal was rejected by the Board in its meeting dated 30-7-1993. Parcelling out of contract from the tender to an outsider is a strange phenomenon in any tender and is clearly impermissible; The said Australian company is represented by its Chairman Dr. Anand Krishnan, a family member of Alagendran. All the profits arising out of the said transaction is being surreptitiously transferred to Australia, which is a great loss to the nation. The contents of Total Moisture and Volatile Matter are at a high percentage and the likelihood of the combination of the same to be deadly to cause fire hazards/ex-poison, have been completely ignored. Award of contract to M/s. Countercorp Trading Pvt. Limited, Singapore, is scandalous, as the said party has from the beginning at every stage been bringing in controversial aspects and made a change in terms after the opening of the tenders. By creating wrong impressions in letters/statements in reply to queries raised by potential and prospective tenderers, the first Respondent has prevented several of them from participating and thus violated the provisions of Article 14 of the Constitution of India. The Government of India has in its Duty Exemption Order dated 15-9-1992 clearly insisted upon import of good quality coal at a reasonable price as the basis for grant of exemption. The first Respondent has acted contrary to the terms of the Duty Exemption Order and is im-porting coal of inferior quality at most unreasonable price. It is necessary to examine all the contracts awarded by the first Respondent in detail and during the pendency of the writ petition, interim orders should be passed restraining the first Respondent from opening any fresh letters of credit, from settling payments for the value of coal through the Letters of Credit already opened until satisfactory test reports as to the quality of the coal in respect of the respective consignments are obtained from the competent institution as may be nominated by this Court and from settling the payment of value of coal through Letters of Credit already opened until the purchase orders are corrected to include penalty provisions for Total Moisture, Gross Calorific Value and Sulphur as stipulated in the tender dated 12-2-1993. A prayer is also made for an interim order directing the Collector of Customs, Madras, who is the fourth Respondent to take samples of each consignment of coal imported by the first Respondent and send the same for chemical test to the Laboratory of the "Central Fuel Research Institute, Dhanbad" for correct analysis of composition of all elements in the coal and to give clearance for release of coal only after ensuring that the finding in the test report is in compliance with the specification in the Purchase Order/Contracts.

3. All the Respondents have filed counter affidavits. Respondents 1 and 2 have denied every allegation made by the Petitioner in his affidavit and challenged the maintainability of the writ petition. It is their contention that the writ petition has been filed purely on political motivation and not for judicial redress.

4. The fourth Respondent has filed a counter affidavit in which he has stated that samples were drawn from the imported coal in the presence of representatives of the first Respondent and sent for test to National Metallurgical Laboratory, Madras, Neyveli Lignite Corporation Ltd., Neyveli, Indian Institute of Technology and Messrs. Italab, Madras. It is also stated that as per the reports of the Laboratory, the Gross Calorific Value is found to be less than 6400 K. Cal/Kg. which was the standard prescribed by the first Respondent in the tender and, therefore, the first Respondent was not entitled to get exemption from payment of duty. It is further stated that the first Respondent has been called upon to remit the difference between the duty finally assessed and that provisionally assessed. It is also stated that the Bank Guarantee provided by the first Respondent has been enforced. Ultimately it is averred that the prayer in the affidavit of the Petitioner as against the fourth Respondent has become infructuous and the writ petition has to be dismissed.

5. Initially, the Writ Petition was filed only against four persons viz., the Tamil Nadu Electricity board, the Government of Tamil Nadu represented by the Secretary to Government, Public Works Department, Government of Tamil Nadu represented by the Secretary to Government, Department of Energy and the Collector of Customs, Madras. The contracting parties were impleaded as Respondents 5 to 12 by order dated 27-10-1993 in W.M.P. No. 27027 of 1993. Respondents 5, 7, 8, 11 and 12 have filed their counter affidavits denying the allegations contained in the Petitioner's affidavit.

6. When the Writ Petition was taken up for hearing, a preliminary objection was raised by counsel for the first Respondent that it has become infructuous and no relief can be granted to the Petitioner in this petition. It is submitted that the exemption from payment of duty granted by the Government of India was only upto 15-9-1993 and the period of exemption has already come to an end. It is also submitted that the first Respondent has stopped importing coal under the "Specification Coal-10 dated 12-2-1993" and no further import is going to be made there under. It is submitted that to the extent to which coal has been imported, payments have been made excepting the amount of 10% of the CIF Value retained by virtue of direction issued by this Court in W.M.P. Nos. 24474 and 25137 of 1993 on 1-9-1993. It is further submitted that the order passed by the Collector of Customs holding that the first Respondent is not entitled to the benefit of exemption from duty is challenged in appeal before the Appropriate Authority. It is, therefore, contended that in the circumstances, the prayer made by the Petitioner in the writ petition cannot be granted and this Court shall not issue a futile writ. It is also pointed out by Learned Counsel that the Petitioner has no locus standi to question the award of a contract to certain third parties, as he never intended to be a competing tenderer. Learned Counsel placed reliance on the judgment of a single Judge of this Court in *R.S. Bharathy v. Tamilnadu Electricity Board and Ors.* (W.P. 10280 of 1993 dated 15-10-1993, where in the learned Judge after discussing the relevant case law therein cannot question the mode adopted by on the subject has held that the Petitioner Tamil Nadu

Electricity Board in purchasing ACSR Conductors through SIDCO, as he was not a person owning S.S.I. Unit.

7. Learned Counsel for the Petitioner vehemently argued that the Petitioner being a Member of the Parliament is eminently fit to launch a Public Interest Litigation, questioning the propriety of the State in awarding a contract to some third parties involving a loss of several cores of rupees to the State exchequer. According to him, when the attention of the Court is drawn to administrative misdemeanor wasting public money, it is the duty of the Court to investigate the same and give appropriate direction to the concerned authorities besides nullifying the contract. It is argued that the Respondents cannot escape by pleading fait accompli. He submitted that even in the matter of award of contracts, the court has jurisdiction to enquire into the propriety of State action and verify whether any principles of the Constitution have been violated and whether there is any arbitrariness on the part of the State. He has drawn our attention to the various rulings of the Supreme Court. It is contended that even if the contract has been executed, the Court can issue appropriate directions in the matter.

8. Both counsel made reference to the judgment of the Supreme Court in S.P. Gupta Vs. President of India and Others, wherein the scope of Public Interest Litigation has been discussed in detail at length. When counsel for the Petitioner relied on some passages in support of his contention, counsel for the Respondents could also refer to a few other passages to contend that in spite of the widened scope of Public Interest Litigation, no relief can be granted in this petition. The Petitioner's counsel has placed reliance on the following passages:

(17.)It may therefore now be taken as well established that where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal rights or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such person or determinate class of persons, in this Court under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons. Where the weaker sections of the community are concerned, such as under trial prisoners languishing in jails without a trial inmates of the Protective Home in Agra or Harijan workers engaged in road construction in the Ajmer District, who are living in poverty and destitution, who are barely eking out a miserable existence with their sweat and toil, who are helpless victims of an exploitative society and who do not have easy access to justice, this Court will not insist on a regular writ petition to be filed by the public spirited individual espousing their

cause and seeking relief for them. this Court will readily respond even to a letter addressed by such individual acting pro bono public.

...

But there may be cases where the State or a public authority may act in violation of a constitutional or statutory obligation or fail to carry out such obligation, resulting in injury to public interest or what may conveniently be termed as public injury as distinguished from private injury. Who would have standing to complain against such act or omission of the State or public authority? Can any member of the public sue for judicial redress? Or is the standing limited only to a certain class of persons? Or there is no one who can complain and the public injury must go unredressed. To answer these questions it is first of all necessary to understand what is the true purpose of the Judicial function.

...

The view has therefore been taken by the Courts in many decisions that whenever there is a public wrong or public injury caused by an act or omission of the State or a public authority which is contrary to the Constitution or the law, any member of the public acting bona fide and having sufficient interest can maintain an action for redressal of such public wrong or public injury. The strict rule of standing which insists that only a person who has suffered a specific legal injury can maintain an action for judicial redress is relaxed and a broad rule is evolved which gives standing to any member of the public who is not a mere busy-body or a meddlesome interloper but who has sufficient interest in the proceeding. There can be no doubt that the risk of legal action against the State or a public authority by any citizen will induce the State or such public authority to act with greater responsibility and care thereby improving the administration of justice.

...

If public duties are to be enforced and social collective "diffused" rights and interests are to be protected, we have to utilise the initiative and zeal of public-minded persons and organisations by allowing them to move the court and act for a general or group interest, even though they may not be directly injured in their own rights. It is for this reason that in public interest litigation undertaken for the purpose of redressing public injury, enforcing public duty, protecting social. collective "diffused" rights and interests or vindicating public interest, any citizen who is acting bona fide and who has sufficient interest has to be accorded standing.

(22.) We would therefore, hold that any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision. This is absolutely essential for maintaining the

rule of law, furthering the cause of justice and accelerating the pace of realisation of the constitutional objective.

9. Learned Counsel for the first Respondent has placed reliance on the following passages in the same judgment:

We have taken a broad and liberal view in regard to locus standi and held that any public spirited advocate acting bona fide and not for private gain or personal profit or political motivation or any other oblique consideration, may file a writ petition in the High Court challenging an unconstitutional or illegal action of the Government or any other constitutional authority prejudicially affecting the administration of justice and in such writ petition he may claim relief not for himself personally but for those who are the direct victims of such unconstitutional or illegal action, because granting such relief to them would repair the injury caused to administration of justice. But the persons for whom the relief is sought must be ready to accept it; they must appear and make it known that they are claiming such relief. It cannot be thrust upon them unless they wish it.

...

The Court does not decide issues in the abstract. It undertakes determination of a controversy provided it is necessary in order to give relief to a party and if no relief can be given because none is sought, the Court cannot take upon itself a theoretical exercise merely for the purpose of deciding academic issues, howsoever important they may be. The Court cannot embark upon an inquiry whether there was any misuse or abuse of power in a particular case, unless relief is sought by the person who is said to have been wronged by such misuse or abuse of power. The Court cannot take upon itself the role of a commission of inquiry - a knight errant roming at will with a view to destroying evil wherever it is found.

10. In *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, , the Court said:

We have on more occasions than one said that public interest litigation is not in the nature of adversary litigation but it is a challenge and an opportunity to the Government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice which is the signature tune of our Constitution. The Government and its officers must welcome public interest litigation, because it would provide them an occasion to examine whether the poor and the down-trodden are getting their social and economic entitlements or whether they are continuing to remain victims of deception and exploitation at the hands of strong and powerful sections of the community and whether social and economic justice has become a meaningful reality for them or it has remained merely a teasing illusion and a promise of unreality, so that in case the complaint in the public interest litigation is found to be true, they can in discharge of their constitutional

obligation root out exploitation and injustice and ensure to the weaker sections their rights and entitlements. When the Court entertains public interest litigation, it does not do so in a cavilling 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 observances of social and economic rescue programmes, 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 realisation of the constitutional objectives.

11. In the same case, Pathak, J. issued a note of caution in the following words:

Importantly, at the same time, the Court must never forget that its jurisdiction extends no farther than the legitimate limits of its constitutional powers, and avoid trespassing into political territory which under the Constitution has been appropriated to other organs of the State.

(60.) Turning now to the nature and extent of the relief which can be contemplated in public interest litigation, we enter into an area at once delicate and sensitive and fraught with grave implications. Article 32 confers the wide amplitude of power on this Court in the matter of granting relief. It has power to issue "directions or orders or writs", and there is no specific indication, no express language, limiting or circumscribing that power. Yet the power is limited by its very nature, that it is judicial power. It is power which pertains to the judicial organ of the State, identified by the very nature of the judicial institution. There are certain fundamental constitutional concepts which, although elementary, need to be recalled at times. The Constitution envisages a broad division of the power of the State between the Legislature, the Executive and the Judiciary. Although the division is not precisely demarcated, there is general acknowledgment of its limits. The limits can be gathered from the written text of the Constitution, from conventions and constitutional practice, and from an entire array of judicial decisions. The constitutional lawyer concedes a certain measure of overlapping in functional action among the three organs of the State. But there is no warrant for assuming a geometrical congruence. It is common place that while the Legislature enacts the law, the Executive implements it and the Court interprets it and, in doing so, adjudicates on the validity of executive action and, under our Constitution, even judges the validity of legislation itself. And yet it is well recognized that in a certain sphere the Legislature is possessed of a measure of both legislative and judicial functions, and the Court, in its duty of interpreting the law, accomplishes in its perfected action a marginal degree of legislative exercise. Nonetheless, a fine and deliberate balance is envisaged under our Constitution between these primary institutions of the State. In similar Constitutions elsewhere the Courts have been anxious to maintain and preserve that balance. An example is provided by *Marbury v. Madison* (1803) 5 US (1 Cranch) 137. I do not mean to say that the Court should hesitate or falter or withdraw from the exercise of its jurisdiction. On the contrary, it must plainly do

its duty under the Constitution. But I do say that in every case the Court should determine the true limits of its jurisdiction and, having done so, it should take care to remain within the restraints of its jurisdiction.

(66.) An activist Court, spearheading the movement for the development and extension of the citizen's constitutional rights, for the protection of individual liberty and for the strengthening of the socio-economic fabric in compliance with declared constitutional objectives, will need to move with a degree of judicial circumspection. In the centre of a social order changing with dynamic pace, the Court needs to balance the authority of the past with the urges of the future. As far back as 1939, Judge Learned Hand (52 HLR 361 (1939)) observed that a Judge "must preserve his authority by cloaking himself in the majesty of an overshadowing past; but he must discover some composition with the dominant needs of his times". In that task the Court must ever be conscious of the constitutional truism that it possesses the sanction of neither the sword nor the purse and that its strength lies basically in public confidence and support, and that consequently the legitimacy of its acts and decisions must remain beyond all doubt. Therefore, whatever the case before it, whatever the context of facts and legal rights, whatever the social and economic pressures of the times, whatever the personal philosophy of the Judge, let it not be forgotten that the essential identity of the institution, that it is a Court, must remain preserved so that every action of the Court is informed by the fundamental norms of law, and by the principles embodied in the Constitution and other sources of law. If its contribution to the jurisprudential ethos of society is to advance our constitutional objectives, it must function in accord with only those principles which enter into the composition of judicial action and give to it its essential quality.

(67.) There is great merit in the Court proceeding to decide an issue on the basis of strict legal principle and avoiding carefully the influence of purely emotional appeal. For that alone gives the decision of the Court a direction which is certain, and unfaltering, and that particular permanence in legal jurisprudence which makes it a base for the next step forward in the further progress of the law. Indeed, both certainty of substance and certainty of direction are indispensable requirements in the development of the law, and invest it with the credibility which commands public confidence in its legitimacy.

(68.) This warning is of a special significance in these times, during a phase of judicial history when a few social action groups tend to show evidence of presuming that in every case the Court must bend and mould its decision to popular notions of which way a case should be decided.

12. In Chaitanya Kumar and Others Vs. State of Karnataka and Others, , on which considerable reliance is placed by Learned Counsel for the Petitioner, the Supreme Court upheld the judgment of the Karnataka High Court quashing the order of the Government as arbitrary, capricious etc. in awarding contracts to bottle arrack. Learned Counsel for the Petitioner submits that even in the matter

of a contract, a public interest litigation has been entertained by the Court. It is rightly pointed out by Learned Counsel for the first Respondent that there were several writ petitions in that case filed by the interested parties themselves and the Court had no occasion to consider whether in the matter of a contract, a public interest litigation by a third party totally unconnected with the interested parties, can be maintained. The decision turned on the facts of the case and the Court held that it cannot close its eyes and persuade itself to uphold publicly mischievous executive actions which have been so exposed and when arbitrariness and perversion are writ large and brought out clearly, the Court cannot shirk its duty and refuse its writ.

13. Learned Counsel for the Petitioner referred to the judgments in *Banwasi Seva Ashram Vs. State of U.P. and Others*, , *Dr D.C. Wadhwa and Others Vs. State of Bihar and Others*, , *Vincent v. Union of India* (AIR 1987 S.C. 990) and *M.C. Mehta and another Vs. Union of India and others*, in support of his contention that the Court could always issue directions to protect public interest. In our view, the rulings have no direct bearing on the question raised before us. In *Vincent's case* (AIR 1987 S.C. 990), the Court said that a judicial proceeding is not an appropriate one to decide whether certain drugs were injurious and they should be banned, but issued directions to the Central Government to consider the objections of the Petitioners and take appropriate steps.

14. In *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, , *Khalid, J.* has highlighted the need for restraint on the part of the public interest litigants when they move Courts, He said:

Public interest litigation has now come to stay. But one is led to think that it poses a threat to Courts and public alike. Such cases are now filed without any rhyme or reason. It is, therefore, necessary to lay down clear guidelines and to outline the correct parameters for entertainment of such petitions. If Courts do not. restrict the free flow of such cases in the name of Public Interest Litigations, the traditional litigation will suffer and the Courts of law, instead of dispensing justice, will have to take upon themselves administrative and executive functions.

(60.) It is only when Courts are apprised of gross violation of fundamental rights by a group or a class action or when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the Courts, especially this Court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the underdog and the neglected. I will be second to none in extending help when such help is required. But this does not mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self imposed restraint on public interest litigants.

15. The judgments of the Supreme Court in *M.C. Mehta Vs. Union of India (UOI) and Others*, , *Rural Litigation and Entitlement Kendra Vs. State of U. P.*, , *Rural*

Litigation and Entitlement Kendra Vs. State of U. P., , Sheela Barse Vs. Union of India (UOI) and Others, and B.R. Kapoor and Another Vs. Union of India (UOI)and Others, , cited by Learned Counsel for the Petitioner have no relevance to the question raised before us,

16. In Janata Dal Vs. H.S. Chowdhary and Others, , a Division Bench of the Supreme Court has traced the entire law of Public Interest Litigation and observed:

96. While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly developed doctrine of PIL, it has also hastened to sound a red alert and a note of severe warning that Courts should not allow its process to be abused by a mere busy body or a meddlesome interloper or wayfarer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration.

The Bench referred to the observations of Bhagwati, J. in S.P. Gupta Vs. President of India and Others, that the Court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective. After referring to some other judgments in which caution is administered against vexatious and frivolous litigations, the Bench said:

(107.) 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 considerations. Similarly, a vexatious petition under the color PIL brought before the Court for vindicating any persona grievance, deserves rejection at the threshold.

(108.) It is depressing to note that on account of such trumpery proceedings initiated before the Courts, innumerable days are wasted which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we are second to none in fostering and developing the newly invented 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, unrepresented 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 the undue delay in service matters, Government or private persons awaiting the disposal of tax cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detents expecting their release from the detention orders etc., etc. are all standing a long serpentine queue for years with the fond hope of

getting into the Courts and having their grievances redressed, the busy bodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either for themselves or as proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffling 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 Court never moves which piquant situation creates a frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system.

17. Learned Counsel for the Petitioner has drawn our attention to the judgment in *Sterling Computers Limited and Others Vs. M and N Publications Limited and Others*, wherein the award of contract for publication of telephone directory was considered. It is submitted by Learned Counsel that the litigation in that case was a Public Interest Litigation and the Court had gone into the question of validity of contract at the instance of a third party. We do not find anything in the report to indicate that it was a Public Interest Litigation. On the other hand, the facts set out in the judgment read as if the litigation was only at the instance of interested parties.

18. Learned Counsel for the Petitioner also relied on the judgment of the Supreme Court in *S. Vasudeva Vs. State of Karnataka and others*, . An order of the State Government granting exemption from Chapter III of the Urban Land (Ceiling and Regulation) Act, 1976 to a vacant land in excess of ceiling limit for the purpose of sale to a third party was challenged successfully in a Public Interest Litigation. The judgment has no bearing in the present case.

19. Learned Counsel for the Petitioner submitted that the writ petition was maintainable on the date when it was filed and it cannot be dismissed on the ground of non-maintainability as on date just because a part of the contract has been executed and the remaining part is not going to be implemented by the first Respondent. There is no merit in this contention. Having regard to the subsequent events after the filing of the writ petition and mainly the expiry of the period for which exemption from payment of customs duty was granted, it is certainly open to the Court to consider whether any relief could be granted or direction issued at this stage as prayed for by the Petitioner and whether the issue of a writ would only be futile. We have already pointed out that the Petitioner has prayed for four interim orders, one of which is directed against the fourth Respondent. We have also referred to the counter affidavit filed by the fourth Respondent that the said prayer has become in fructuous. As regards the other three interim orders prayed for by the Petitioner, a single judge of this Court granted in W.M.P. No. 244f4 of 1993 one of them, restraining the first Respondent from opening any fresh Letters of Credit in servicing the purchase orders relating to the impugned tender dated 12-2-1993. That interim order was vacated by an order dated 1-9-1993 passed in C.M.P. Nos. 24474 and 25137

1993, whereby the former petition was dismissed. The first Respondent has filed an affidavit on 16-3-1994 in reply to the additional affidavit filed by the Petitioner on 15-3-1994 in which it is stated that there will not be any more import of coal under T.N.E.B.'s "Specification Coal-10. dated 12.2.1993", as the validity of the concession in customs duty had expired on 15-9-1993. In view of the said statement, there is no need for issue of any writ in that regard. The other two interim prayers were never granted and the Court ordered only notice. Payments have been made by the first Respondent for the coal already imported excepting to the extent of 10%. In fact, the tender notification itself provides for payment of 90% CIF value initially and the balance 10% only on production of Certificate of final analysis and draught survey weight at the destination. Any writ issued at this stage as prayed for by the Petitioner will be only futile. This position is also admitted by the Petitioner himself in paragraph 17.B of his affidavit in the following words:

If pending disposal of the Writ Petition First Respondent is allowed to import the entire quantity of 20 lakh tones of Coal public interest will suffer. It will become a fait accompli and nothing can be done by this Hon'ble Court, even if it finds that the entire tender processing and consequential award of contracts are illegal.

20. In spite of the aforesaid averment in the affidavit, it is argued that having regard to the allegations made by the Petitioner in the affidavit, the Court should direct an enquiry into the alleged illegalities and irregularities or in other words, the administrative misdemeanour as called by Learned Counsel for the Petitioner and appropriate directions should be given. We have only to point out at the risk of repetition that the Supreme Court has in unequivocal terms prohibited such an enquiry at the instance of Court, in the following words:

The Court cannot embark upon an inquiry whether there was any misuse or abuse of power in a particular case, unless relief is sought by the person who is said to have been wronged by such misuse or abuse of power. The Court cannot take upon itself the role of a commission of inquiry - a knight errant roaming at will with a view to destroying evil wherever it is found (Vide S.P. Gupta Vs. President of India and Others, .

21. It is also brought to our notice by Learned Counsel for the first Respondent that the State Government has already appointed a Commission of Inquiry for the purpose of making an enquiry into the alleged irregularities in tender procedures in the import of coal by the Tamil Nadu Electricity Board, tampering of records, leakage of information contained in the Government and Tamil Nadu Electricity Board files, loss to public exchequer, charges of corruption and criminal connivance involving the Chief Minister of Tamil Nadu, Minister for Public Works and Officers specified therein. Vide G.O. Ms. No. 6, Energy, dated 29-8-1993 published in Part II - Section 2 of Tamil Nadu Government Gazette Extraordinary, Madras-dated August 29, 1993.

23. In the circumstances we are of the view that nothing survives in the writ

petition for the Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India. It is needless to state that it is open to the Petitioner to place all the materials available to him before the aforesaid Commission of Inquiry appointed by the State Government under the Commission of Inquiry Act, 1952. Hence, the writ petition is dismissed; but there will be no order as to costs.