

(1994) 01 DEL CK 0050

In the Delhi High Court

Case No : Criminal Writ Appeal No. 505 of 1992

Surinder Singh Ahluwalia

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 07-01-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 1 AD 205 : (1994) 53 DLT 174 : (1994) 28 DRJ 463

Hon'ble Judges : V.K. Jain, J;D.P Wadhwa, J

Bench : Division Bench

Advocate : P.N. Lekhi, M.K. Garg, V.K. Shall, Kailash Vasdev, K.T.S. Tulsi, D.N. Goverdhan and Pinki Anand, for the Appellant;

Judgement

Vijender Jain, J.

(1) Main parties to this petition are both Ias Officers. Petitioner was inducted into Ias and allocated to the State of Nagaland in the year 1968. Respondent No.3 Shri K.S. Puri is also an Ias Officer and allocated to the State of Nagaland.

(2) Other respondents are Union of India in the Ministry of Personnel, Public Grievances and Pension as respondent No. 1 and Government of Nagaland as respondent No.2 Director of Enforcement is respondent No. 4.

(3) In short the prayer in the writ petition by the petitioner is for issuance of a writ of mandamus to Union of India to institute a Cbi inquiry against respondent No. 3 and other relief in the nature of directing respondent No. 4 to inquire, investigate and proceed in accordance with law regarding allegations of violation of the provisions of Foreign Exchange Regulation Act by respondent No.3. The petitioner has further sought a mandamus for instituting similar proceedings as has been done against him and further declaration against respondent No. 3 not to act as Adviser to the Governor to the State of Nagaland.

(4) On 23rd April, 1993, we directed that this matter will be heard first on the preliminary objection raised by the respondents that such a petition as one of

public interest is not maintainable

(5) This Court while issuing show cause has confined the notice only to the question raised in the letter dated July 2, 1992 (Annexure P-10) excluding the portion of the letter relating to the relief sought by the petitioner for himself. The said letter is a communication by the petitioner when according to him, he was Principal Secretary to the Government of Nagaland to one Shri Dandapani, Secretary in the Ministry of Personnel, Government of India. A copy of this letter has been addressed to the Director of Cbi and Chief Resident Commissioner, Government of Nagaland. In the said letter petitioner had made various allegations against K.S. Puri respondent No. 3 regarding foreign exchange violation, forging the signatures of Prof. (Dr.)J. Draeger of West Germany for claiming reimbursement for his treatment in West Germany, his assets being disproportionate to his own sources of income and violation of All India Services (Conduct) Rules, 1968.

(6) Respondents have strongly refused all the allegation made against them by the petitioner. According to Shri K.T.S. Tulsi, Addl. Solicitor General appearing for respondent No. 3 all these allegations have been looked into by the Central Government and nothing incriminating has been found against respondent No. 3. Shri Tulsi has submitted that the present petition is an abuse of process of law, as a matter of fact by virtue of this petition the petitioner is unleashing personal vendetta against K.S. Puri. Shri Tulsi has further argued that this is not a petition in public interest but in fact it is a petition to wreak vengeance against respondent No.3. According to him the petitioner does not fulfill the qualification of invoking the extra ordinary jurisdiction of this Court as the petitioner is not the person aggrieved. He has cited in his support the case of Janata Dal Vs. H.S. Chowdhary and Others, , Krishna Swami Vs. Union of India and another, and Simranjit Singh Mann Vs. Union of India and another, .

(7) According to Shri Tulsi allegations contained in the letter under reference regarding reimbursement of medical bills and like do not invite public interest. He says that those who file petitions out of personal enmity are disqualified to get relief from the Courts. Another leg of arguments of Shri Tulsi is that all these allegations have been looked by the Cabinet of the Government of Nagaland and those decisions are not open for judicial review.

(8) On the other hand, Shri P. N. Lekhi has argued that in a petition like the present one it is not necessary to determine the locus standi of the petitioner. According to him the Court will not be concerned with the formalities of adversarial procedure. He laid stress that when public power is used for private purposes then Court should interfere as civil servant serving at important places have not only be men of proven integrity but their actions are transparent which can be scrutinised on proper material by the Courts. It is imperative need to control the pollution in the administration. In his support he cited Bandhua Mukti Morcha Vs. Union of India (UOI) and Others, , wherein the Supreme Court observed thus:-

"....We have no 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 victim"s 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 caviling spirit or in a confrontational mood or with a view to tilling at executive authority or seeking to usurp it, but its attempt is only to ensure observance 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. "

(9) Shri Lekhi has further argued that there is no dominus litis to a person who brings a public interest litigation but what the petitioner has agitated in the present petition is not prejudicial to the public weal. In his support he has cited Sheela Barse Vs. Union of India (UOI) and Others, and sought the support from the following observations made by the Supreme Court in the said case:-

"THE first ground, Therefore, does not justify the withdrawal of this public interest litigation, If we acknowledge any such status of a dominus IIT is to a person who brings a public interest litigation, we will render the proceedings in public interest litigation vulnerable to and susceptible of a new dimension which might, in conceivable cases, be used by persons for personal ends resulting in prejudice to the public weal."

(10) Shri Lekhi has argued that in the public interest jurisprudence the question of locus standi has to be understood in terms of public weal and as a matter of fact it is not a particular litigant who is before the Court but public by and large is before the Court in such cases. Another leg of the argument of Shri Lekhi is that even in United Kingdom as per Supreme Court Practice Order 53 Rule 3 Sub-rule (7) it talks of sufficient interest and not of the right in the litigation. In his support he cited Irc Vs. Federation of Self-Employed, (1981) 2 All E.R. 93 wherein it was held:-

"WHETHER an applicant for mandamus had a sufficient interest in the manner to which the application related, for the purposes of Order 53, Rule 3 (5) depended

on whether the definition (statutory or otherwise) of the duty alleged to have been breached or not performed expressly or impliedly gave the applicant the right to complain of the breach or nonperformance. Since the tax legislation, far from expressly or impliedly conferring on a taxpayer the right to make proposals about another's tax or to inquire about such tax, in fact indicated the reverse by reason of the total confidentiality of assessments and negotiations between individuals and the Revenue, and since on the evidence the Revenue in making the impugned arrangement were genuinely acting in the care and management of taxes under the powers entrusted to them, the application made by the applicant would be dismissed because the applicant did not have sufficient interest for the purpose of Rule 3 (5), or (per Lord Diplock) because it had not been shown that the Revenue had acted ultra vires or unlawful in making the arrangement ."

(11) Shri Lekhi has further argued that administrative purity is the test and for maintaining the sanctity and purity of the administration corrupt civil servants which are known to have used their office to further their personal interest have to be exposed and brought in the realm of all prevailing laws so as to make them accountable and that is the public weal for which this petition is maintainable and this Court has got the jurisdiction to grant relief as prayed. In his support he has cited *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, .

(12) Mr. Lekhi has argued that even otherwise other respondents should proceed against respondent No. 3 in the same manner as they have done in the case of the petitioner and that will be in accordance with the principle of administrative fairness. In his support he has cited *Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others*, in which it is held:-

".....For this concept of fairness, adjudicative setting are not necessary, nor it is necessary to have *lis inter partes*. There need not be any struggle between two opposing parties. The duty to act judicially or to act fairly may arise in widely different circumstances. It may rise expressly or impliedly depending upon the context and considerations. All these types of non-adjudicative administrative decision making are now covered under the general rubric of fairness in the administration. But when even such an administrative decision unless it affects one's personal rights or one's property rights, or the loss of or prejudicially affects something which would juridically be called at least a privilege does not involve the duty to act fairly consistent with the rules of natural justice. We cannot discover any principle contrary to this concept. "

(13) On the other hand, Shri K.T.S. Tulsi Counsel for respondent No.3 has submitted that dispute of private nature is not maintainable, in cases where alternative civil remedies are available. He has argued that the allegations against the petitioner are individual regarding medical reimbursement and like which do not invite public interest. As a matter of fact he stressed that personal enmity and political ambition disqualify the petitioner from maintaining the petition. In his support he has cited *Ramsharan Autyanuprasi and another Vs.*

Union of India and others, . According to him the present petition is motivated and has been filed by the petitioner out of professional rivalry. He vehemently sought to draw support from *Jama Dal Vs. H. S. Chowdhary and Others* (supra) where the Supreme Court has held:-

"EVEN if there are million questions of law to be deeply gone into and examined in a criminal case of this nature registered against specified accused persons, it is for them and them alone to raise all such questions and challenge the proceedings initiated against them at the appropriate time before the proper forum and not for third parties under the grab of public interest litigants. "

" IN contrast ,the strict rule of locus standi applicable to private litigation is relaxed and a broad rule is evolved which gives the right of locus standi to any member of the public acting bona fide and having sufficient interest in instituting an action for redressal of public wrong or public injury, but who is not a mere busybody or a meddlesome interloper, since the dominant object of Pil is to ensure observance of the provisions of the Constitution or the law which can be best achieved to advance the cause of community or disadvantaged groups and individuals or public interest by permitting any person, having no personal gain or private motivation or any other oblique consideration but acting bona fide and having sufficient interest in maintaining an action for judicial redress for public injury to put the judicial machinery in motion like actio popularis is of Roman Law whereby any citizen could bring such an action in respect of a public delict. "

"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 rejection at the threshold."

(14) In the case before us it has been argued that the decision of the Cabinet of the Government of Nagaland dated 5th September, 1990 the photocopy of the minutes of which have been filed on the record, inter alia, has mentioned that Cabinet discussed the proposal regarding reimbursement of claims for medical treatment of respondent No. 3 at Hamburg ,West Germany including expenses incurred in journey in relaxation of existing orders in force. The main grievance of the petitioner in this regard is that once a decision of the Cabinet is taken in relaxation of the existing order then the same is not as per law and, Therefore, there will always be the power of judicial review. It has been argued before us that power of relaxation is not common law power and rightly so, since the effect of such relaxation affects the public exchequer. Once it involves public money the State cannot escape from the scrutiny of judicial review. It has also been argued before us that if the Court is satisfied that the State of Nagaland has misused the public money it should not stress on the locus of the petitioner. Shri Lekhi has cited *J. Mohapatra and Co. and Another Vs. State of Orissa and Another*, in which

the Supreme Court held:-

"WE are unable to follow the reasoning behind the first ground upon which the High Court rested its decision. It appears to us paradoxical that when a person has submitted books for selection, it is to be said that he has waived the objection which he had to the Constitution of the Sub-Committee and that when a person has not submitted any books for selection it is to be said that he is not a "person aggrieved". To say so would be a contradiction in terms. If the reasoning of the High Court were correct, the sequitur would be that nobody would be able to challenge any selection of books, for a person who challenges the selection must either be one who has submitted a book or books for selection or one who has not submitted any book for selection. In our opinion, the High Court was not right in the view it took. Merely by submitting books for selection of which some might have been selected, a person cannot be said to have waived the objection which he may have to the Constitution of the Committee which selects the books. Similarly, merely because a person does not submit any book for selection, it cannot be said that he is not a person aggrieved. Today, the law with respect to locus standi has considerably advanced both in this country and in England and in the case of public interest litigation it is not necessary that a petitioner should himself have a personal interest in the matter.... "

(15) The whole thrust of the argument of Shri Lekhi was that if Court is satisfied that public mischief is committed then it should not non-suit the petitioner only on the ground of locus standi. He has also cited R. Vs Metropolitan Public Commissioner (1968) 1 All E.R. 763, R. V. Metropolitan Police Commissioner(1973) 1 All E.R. 324, R V. Greater London Council, ex-parte Blackburn (1976) 3 All E.R. 184 and Fertilizer Corporation Kamagar Union (Regd.) Sindri and Others Vs. Union of India and Others Air 1981 SC 344. On the basis of the above authorities Shri Lekhi has argued that Courts act as ombudsman by policing the corridors of powers.

(16) The fact of the matter is that the Government of Nagaland, Department of Personnel and Administrative Reforms vide letter dated nil May 1991, copy of which was addressed to the Secretary, Government of India, Ministry of Personnel and Central Vigilance Commissioner, Bikaner House has reiterated that case against respondent No. 3 stands irrevocably closed from legal, vigilance and all other angles with effect from the date of withdrawal of consent in respect thereof. The stand taken in the counter affidavit by respondent No. 2, i.e. Government of Nagaland is that the present petition which has been filed by the petitioner is motivated and is an abuse of the due process of law. According to the averments petitioner is facing serious charges under the Prevention of Corruption Act and a charge sheet has been filed by the Cbi against him in the Court of competent jurisdiction As discussed earlier the Cabinet of Nagaland which met on 5th September, 1990 in relaxation of existing orders has reimbursed the claims for medical treatment of K.S. Puri respondent No. 3 though it would have been appropriate that when a benefit is given in relaxation

of existing orders in force, proper consideration based on objective material ought to have been reflected on the nothings in the file. In spite of the repeated opportunities granted to Government of Nagaland no such nothings or records were produced before us. Therefore, we agree with the submission of the Counsel for the petitioner that in cases where public money or public exchequer is drained by a decision of the Government in relaxation of existing orders and in the absence of any satisfactory material on record of the file of the Government the Courts are not powerless under Article 226 of the Constitution of India and such actions are amenable to judicial review. It is also important to note that in a country like ours where the whole plethora of powers vested in the Minister under the provisions of the Constitution are exercised by the civil servants. Therefore there has to be transparency into their actions which they perform by virtue of the public positions they enjoy as being civil servants. The purity of administrative action is linked with the integrity of civil servants. In the matter before us the petitioner has worked as a senior bureaucrat in the Government. There are allegations of corruption against him. He feels that respondent No. 3 has a bias against him and Therefore he has been prosecuted. Can petition under Article 226 of the Constitution of India be entertained as a public interest litigation, the answer is in the negative. The Supreme Court in *Janta Dal* "s case (supra) has held that the expression "litigation" means a legal action including all proceedings therein, initiated in Court of law with the purpose of enforcing a right or seeking a remedy. Therefore, lexically the expression "PIL" means a legal action initiated in a Court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected. The definition of Pil emerged from historical context in which the commonality of the various forms of legal representation involving the basis and fundamental rights of a significant segment of the public demanding vindication of its rights has been recognised in various parts of the world. The concept of Pil which has been and is being fostered by judicial activism has become an increasingly important one setting up valuable and respectable records, especially in the arena of constitutional and legal treatment for the unrepresented and under represented.

(17) The prayer of the petitioner to issue a writ of mandamus to Union of India to institute a Cbi enquiry against respondent No. 3 is at the threshold a prayer with which public at large is not involved. Moreover, whether a case has been made out prima facie against respondent No.3, for Cbi to conduct inquiry, has been examined by the Government of India and the State Government of Nagaland and they have decided that no case has been made out for such an action. It is for them to decide whether respondent No.3 has to be prosecuted or not. No public interest is involved. We make it very clear that in cases where an individual is pitted against an individual the remedy is not public interest litigation. The Courts will not normally interfere in the due process of law unless and until it is shown that initiation of action under Pil is for the redressal of public wrong or public injury. In view of the above discussion, we feel that the

petitioner cannot maintain this petition as a public interest litigation. The petition is, Therefore, dismissed. There will be no order as to costs.