
(2004) 03 GAU CK 0013
In the Gauhati High Court
Case No : PIL No. 25 of 2003

Wallamphang Roy

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 26-03-2004

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : (2004) 2 GLT 403

Hon'ble Judges : P.P. Naolekar, C.J.;A.H. Saikia, J

Bench : Division Bench

Advocate : G.K. Bhattacharyya and H.S. Thagkhiew, for the Appellant; K.N. Choudhury, P. Upadhaya, A. Sarma and B. Dutta, for the Respondent

Final Decision : Dismissed

Judgement

A.H. Saikia, J.—This petition is being preferred in the nature of Public Interest Litigation (for short "PIL") assailing the execution of the agreements dated 7.9.01 and 23.4.02 by the State of Meghalaya, the State Respondents with M/s M.S. Associates, Respondent No. 5 appointing Respondent No. 5 as Distributor for "Meghalaya State Computerised On-line Lotteries" (for short, "On-line Lotteries") for organising, distribution, marketing and sale of ticket of On-line Lotteries, throughout the State of Meghalaya involving the transaction of great financial magnitude without the Cabinet approval. The Petitioner has claimed that he, being a public interest spirited citizen, having no personal, private, political or profit motivation and basically having concern with the welfare and development of the State of Meghalaya economically and socially, filed this PIL on the basis of information gathered from the reports of news item published in a local daily "The Shillong Times" dated 13.5.02 and 28.6.02. According to him, if this agreement is allowed to be implemented, the same will have adverse effect on the public exchequer of the Govt, of Meghalaya inasmuch as the Govt, revenue to the tune of thousands of crores of rupees would be siphoned off for causing illegal gain and profit to the persons involved in the impugned agreements. Since

the matter relates to public largesse, the State Respondents ought to have floated notice inviting tenders from the eligible persons for such purpose and hence the entire action lacks transparency and fairness and smacks not only malafide but also a conspiracy to defraud the State coffer severely affecting and jeopardising the development of the State of Meghalaya. In view of the same, a direction has been sought for directing the State Respondents to withdraw, recall or otherwise forbear to give effect to the impugned agreements as well as for quashment of the impugned agreements and also to refer the entire matter to the Central Bureau of Investigation for proper investigation in this regard. All the State Respondents including the Private Respondent No. 5 have resisted the instant PIL by filing their respective affidavits-in-opposition wherein all the allegations, made in the instant petition, have been categorically refuted and denied.

2. Heard Mr. GK Bhattacharyya, learned Sr. Counsel assisted by Mr. H.S. Thangkhiew, learned Counsel appearing for the Petitioner, Mr. A. Sarma, learned Advocate General, Meghalaya assisted by Mrs. B. Dutta, learned Govt. Counsel for the State of Meghalaya and also heard Mr. KN Choudhury, learned Sr. Counsel assisted by Mr. P. Upadhyaya, learned Counsel appearing for the private Respondent No. 5.

3. At the very outset, Mr. Choudhury, learned Sr. Counsel appearing for the Respondent No. 5 has raised a preliminary objection as regards the maintainability of this PIL. His argument, in this regard primarily, is three fold: Firstly. The Petitioner has no locus standi to file this petition in the nature of PIL because the Petitioner, having suffered no public or legal injury by such state action, has failed to make out a case of public interest as manifestly evident from the contentions and averments made in the petition itself. Secondly-there is delay and laches in filing this PIL inasmuch as when the impugned agreements were executed on 7.9.01 and 23.4.02 and the Respondent No. 5 has since invested huge amount of money pursuant to the impugned agreements for their implementation, this PIL has been filed only on 14.7.02. Thirdly -the appointment of Distributorship of On-line Lotteries, being an economic policy of the Govt., cannot be challenged in PIL.

4. Relying on the law laid down by the Apex Court in a catena of decisions, namely, (1) S.P. Gupta Vs. President of India and Others, (2) Janata Dal Vs. H.S. Chowdhary and Others, Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others, and (4) BALCO Employees Union (Regd.) Vs. Union of India and Others, the learned Sr. Counsel has contended that the Petitioner, being a member of the public, in the instant case, has suffered only a secondary public injury which cannot be raised in such PIL and thus the present petition lacks bonafide and sufficient interest on the part of the Petitioner who has approached this Court only for his personal gain with oblique consideration. The petition itself reflects ex-facie that the Petitioner has no business with the execution of the agreements in question which basically pertain to the engagement of the

Respondent No. 5 as Distributor of On-line Lotteries for organizing, distribution, marketing and sale of tickets throughout of the State of Meghalaya and taking into account such execution of the agreements by the State Respondents with the Respondent No. 5, it may be explicitly presumed that the Petitioner has been acting at the behest of certain person or group of persons, having vested interest in the State sponsored On-line Lotteries Distributorship in order to vindicate the grievances of those rivals of the Respondent No. 5. The reason behind filing of this PIL is manifestly clear when the Petitioner has raised his grievance that no tender, bids or quotations were invited from the public and even no public notice for conducting On-line Lottery in the State of Meghalaya was ever issued.

5. Since the preliminary question as regards the maintainability of this PIL as noticed hereinabove, has been raised, we propose to adjudicate on this point first before delving upto the merit of the case.

6. Law on the point of locus standi has already been settled. In SP Gupta's case (Supra) while deciding the question of locus standi of the Petitioner to file PIL, the Apex Court examined as to what was the nature of public interest litigation and who was eligible to initiate such action. In paragraph 20 it was observed as follows:

It is for this reason that in public interest litigation-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.

7. Further, the parameter within which the court should entertain a PIL and the caution against the abuse of the same, is mentioned in paragraphs 24 and 25 in S.P. Gupta's case (Supra) as under:

24. But we must be careful to see that the member of the public, who approaches the court in cases of this kind, is acting bonafide and not for personal gain or private profit or political motivation or other oblique consideration. 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. Andre Rabic has warned that "political pressure groups who could not achieve their aims through the administrative process and we might add, through the political process, "may try to use the courts to further their aims". These are some of the dangers in public interest litigation which the court has to be careful to avoid. It is also necessary for the court to bear in mind that there is a vital distinction between locus standi and justiciability and it is not every default on the part of the State or a public authority that is justiciable. The court must take care to see that it does not overstep the limits of its judicial function and trespass into areas which are reserved to the executive and the legislature by the Constitution. It is a fascinating exercise for the Court to deal with public interest litigation because it is a new jurisprudence which the court is evolving a jurisprudence which

demands judicial statesmanship and high creative ability. The frontiers of public law are expanding far and wide and new concepts and doctrines which will change the complexion of the law and which were so far as embedded in the womb of the future, are beginning to be born.

25. Before we part with this general discussion in regard to locus standi, there is one point we would like to emphasize and it is, that cases may arise where there is undoubtedly public injury by the act or omission of the State or a public authority but such act or omission also causes a specific legal injury to an individual or to a specific class or group of individuals. In such cases, a member of the public having sufficient interest can certainly maintain an action challenging the legality of such act or omission, but if the person or specific class or group of persons who are primarily injured as a result of such act or omission, do not wish to claim any relief and accept such act or omission willingly and without protest, the member of the public who complains of a secondary public injury cannot maintain the action, for the effect of entertaining the action at the instance of such member of the public would be to foist a relief on the person or specific class or group of persons primarily injured, which they do not want.

8. Restricting the entry into the court under the banner of PIL except espousing the cause of violation of basic human rights of the needy, the underdog and neglected, in 1987 the Apex Court in a case of *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, in paragraph 61 observed as follows:

61. 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 hardship 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.

9. The issue of locus-standi was again considered by the Supreme Court in *Janata Dal's case (Supra)* wherein the Supreme Court relying on the observation expressed in AIR 1991 420 (SC) held in paragraph 109 as follows:

109. 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.

10. In *Raunaq International's* case (Supra) where the Apex Court had the occasion to deal with a case where PIL had been filed challenging the award of the contract by the State, in paragraph 12 it was noticed as follows:

12. When a petition is filed as a public interest litigation challenging the award of a contract by the state or any public body to a particular tenderer, the court must satisfy itself that the party which has brought the litigation is litigating bona fide for public good. The public interest litigation should not be merely a cloak for attaining private ends of a third party or of the party bringing the petition. The court can examine the previous record of public service rendered by the organization bringing public interest litigation. Even when a public interest litigation is entertained, the court must be careful to weigh conflicting public interest before intervening. Intervention by the court may ultimately result in delay in the execution of the project. The obvious consequence of such delay is price escalation. If any retendering is prescribed, cost of the project can escalate substantially. What is more important is that ultimately the public would have to pay a much higher price in the form of delay in the commissioning of the project and the consequent delay in the contemplated public service becoming available to the public. If it is a power project which is thus delayed, the public may lose substantially because of shortage in electricity supply and the consequent obstruction in industrial development. If the project is for the construction of a road or an irrigation canal; the delay in transportation facility becoming available or the delay in water supply for agriculture being available, can be a substantial setback to the country's economic development. Where the decision has been taken bona fide and a choice has been exercised on legitimate considerations and not arbitrarily, there is no reason why the court should entertain a petition under Article 226.

11. The question of locus standi of the Petitioner in PIL petition has again been raised before the Apex Court in *Balco Employees Union's* case (Supra). In paragraphs 80 and 88 the Supreme Court observed as follows:

80. PIL is not a pill or a panacea for all wrongs. It was essentially meant to protect basic human rights of the weak and the disadvantaged and was a procedure which was innovated where a public spirited person files a petition in effect on behalf of such persons who on account of poverty, helplessness or economic and social disabilities could not approach the court for relief. There have been, in recent times, increasingly instances of abuse of PIL. Therefore, there is a need to re-emphasize the parameters within which PIL can be resorted to by a Petitioner and entertained by the court. This aspect has come up for consideration before this Court and all we need to do is to recapitulate and reemphasize the same."

88. It will be seen that whenever the Court has interfered and given directions while entertaining PIL it has mainly been where there has been an element of violation of Article 21 or of human rights or where the litigation has been initiated for the benefit of the poor and the underprivileged who are unable to

come to court due to some disadvantage. In those cases also it is the legal rights which are secured by the court. We may, however, add that public interest litigation was not meant to be a weapon to challenge the financial or economic decisions which are taken by the Government in exercise of their administrative power. No doubt a person personally aggrieved by any such decision, which he regards as illegal, can impugn the same in a court of law, but, a public interest litigation at the behest of a stranger ought not to be entertained. Such a litigation cannot per se be on behalf of the poor and the downtrodden, unless the court is satisfied that there has been violation of Article 21 and the persons adversely affected are unable to approach the court.

12. Even this Court while entertaining a PIL relating to a contractual matter in a case of *Miss Tana Hewali v. The State of Arunachal Pradesh and Ors. being P.I.L. No. 9/03* disposed of on 10.6.2003 outrightly rejected such action observing as follows:

No case is made out for entertaining the present Public Interest Litigation. This is a contractual matter. It is for the State to consider what rates are feasible for the commodities to be paid taking into consideration various aspects and no fixed rates for the commodities can be applied simply because the same commodity has been supplied at different places at different rates. The challenge can be made by the aggrieved parties, whose tenders have not been accepted and not by any member of the public. In these circumstances, we do not find any substance in the writ petition and accordingly the petition stands dismissed.

13. In the instant case, on perusal of the pleadings of the parties, it is seen that the matter involved in this case pertains to appointment of Distributorship by the State Respondents for On-line Lotteries which is precisely contractual in nature. Since the Petitioner has challenged the execution of the agreements appointing the Respondent No. 5 as Distributor for On line Lotteries without inviting tenders or issuing public notice, the Petitioner has not suffered any legal or public injury in order to enable him to seek any remedy under this PIL. Herein the person or group of persons who are basically aggrieved by such allotment/appointment of Distributorship in such lottery activities in favour of the Respondent No. 5 and who have been deprived of the fundamental rights for not floating any tender in this regard, has/have not come up to protect his or their interest and it is only the Petitioner who has alone come up to advocate the grievances of those aggrieved persons. Therefore, in view of the case laws as noticed above, we have no hesitation to hold that there is no bonafide and sufficient interest involved in this PIL filed by the Petitioner and hence the Petitioner has no locus standi to move this PIL. It would be appropriate to refer herein a case of this Court decided by the Division Bench wherein an identical situation arose. The case was of *Mrs. Patricic Mukim v. State of Meghalaya and Ors.* reported in 1997(2) GLT 218. In the said case, this Court, inter-alia, held in para 14 as under:

As mentioned earlier, the entire exercise of the Writ Petitioner is basically for invitation of a tender. The persons who are directly affected for not inviting

tender can well take care of their own interest and are not required to take cover a good address.

14. That apart, it appears that as a Govt, policy, the State Respondents have entered into the impugned agreement with the Respondent No. 5 for the economic development of the State of Meghalaya by conducting online lottery. From the affidavit of the Respondent No. 5, it appears that during the year 2000, tender for appointment of Lottery Distributor was floated by the State but there was limited response. One M/S Martin and Co. Chennai was appointed as Distributor but they failed to start the lottery and the agreement executed with them had to be cancelled during 2001. Another open tender was floated during 2001 but only two parties responded. One of those parties was again M/S Martin and Co. Chennai. The State found that the eligibility of either party was not satisfactory and, therefore, the State was forced to reject both the offers. Keeping in view the track record of the invitation of tender and that the process of giving lotteries have been failed, even to take off right from its inception, it was decided by the State to mobilize the additional financial resource without further loss of time. The State Govt, after, due considering the various options and the willingness of the Respondent, decided to appoint it as Distributor for Meghalaya State Computerised Online Lottery. The policy decision taken by the State Govt, in allotting the State Lottery to the Respondent No. 5, in the circumstances of the case, cannot be said to be an arbitrary act. It is settled that the Govt, policy, based on bona fide and public interest, cannot be interfered with by filing writ petition under Article 226 of the Constitution of India, not to speak of Public Interest Litigation. This Public Interest Litigation, in our view, cannot be entertained.

15. In case of Narmada Bachao Andolan Vs. Union of India and Others, dealing with the scope of interference of the court in a Government policy, the Apex Court in paragraphs 233 and 234 held as follows:

233. At the same time, in exercise of its enormous power the court should not be called upon to or undertake governmental duties or functions. The courts cannot run the Government nor can the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under the constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and the rights of Indians. The courts must, therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this Court that in matters of policy the court will not interfere....

234. In respect of public projects and policies which are initiated by the Government the courts should not become an approval authority. Normally such decisions are taken by the government after due care and consideration. In a democracy welfare of the people at large, and not merely of a small section of the society, has to be the concern of a responsible Government. If a considered

policy decision has been taken, which is not in conflict with any law or is not mala fide, it will not be in public interest to require the court to go into an investigate those areas which are the function of the executive. For any project which is approved after due deliberation the court should refrain from being asked to review the decision just because a Petitioner in filing a PIL alleges that such a decision should not have been taken because an opposite view against the undertaking of the project, which view may have been considered by the Government, is possible. When two or more options or views are possible and after considering them the Government takes a policy decision it is then not the function of the court to go into the matter afresh and, in a way, sit in appeal over such a policy decision.

16. In Balco Employees Union's case (Supra) in paragraph 89, the Apex Court observed that the decision to disinvest and the implementation thereof is purely an administrative decision relating to the economic policy of the State and challenge to the same at the instance of a busy body cannot fall within the parameters of public (sic)est litigation. In the present case, in our view, the Petitioner appears to be behaving as busybody who cannot be permitted to approach this Court in PIL. Besides, PIL cannot be used as a weapon to dislodge the economic or financial decisions which are taken by the Government in exercise of their administrative power.

17. Mr. Choudhury, learned Sr. Counsel has also contended that the agreements in question initially were executed on 7.9.01 and 23.4.02 and the Respondent No. 5 has already started its functioning On-line Lotteries by investing its substantial amount of money and man power and this PIL has been filed on 14.7.02 at much belated stage and at this stage if the Petitioner's appointment of Distributorship is interfered with in such PIL, it will suffer irreparable loss and injury. We find enough force in such submission of Mr. Choudhury. In Raunaq's case (Supra), the Supreme Court in paragraph 17 held that in case of a Government project wherein a detailed consideration of the need, viability, financing and cost-effectiveness of such project are required, the objection, if any, as regards apprehension of breach of law against such project, must be raised before the appropriate authorities including the court for taking any legal action at the very initial stage. The court should be moved at the earliest opportunity and belated petition should not be entertained in this regard. Having regard to the ratio laid down in Raunaq's case, we feel that PIL has been filed at belated stage much after the execution of agreements assailed.

18. Mr. Anil Sarma, learned Advocate General, Meghalaya has also contended that under the facts and circumstances narrated in this petition, the Petitioner does not have any legal right to move this Court to impugn Government economic policy.

19. On the other hand, on pointed asking on this preliminary issue as to what right the Petitioner does have to move this PIL, Mr. G.K. Bhattacharyya, learned Sr. counsel has failed to explain about the availability of such right except putting

sole emphasis on the statement that the Petitioner is a public spirited person having concern with the economic growth of the State of Meghalaya. There is nothing to show on the record that there is any public interest involved in preferring this PIL. That being so, upon hearing learned Counsel for the parties and also on perusal of the materials available on record, the preliminary question on the maintainability of this PIL is answered in favour of the Respondents. We are of the considered view that this PIL is not maintainable and deserves outright rejection.

20. Since the preliminary issue has been decided, we refrain ourselves from entering into merit of the case.

21. Consequently, for the foregoing reasons and observations, this writ petition stands dismissed. However, on consideration of the facts and circumstances of the case, there shall be no order as to costs.