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KUSHUM LATA

v

UNION OF INDIA AND ORS.

JULY 12, 2006

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[ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

Uttar Pradesh Minor Minerals Concession Rules, 1963; Rule 23:

C

Auction of Mines of sand—One of the tenderers, not allowed to participate—Filing of writ petition/Public Interest Litigation—Dismissed by High Court—On appeal, Held: Petitioner has styled the writ petition as Public Interest Litigation though it relates to a tender where she herself claimed to be a tenderer—A petition on the same cause of action pending in the High Court wherein she is one of the parties—Under the circumstances,

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High Court was fully justified in dismissing the petition styled as PIL.

Public Interest Litigation—Scope of—Discussed.

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Respondent No.4, an Authority, had issued a Notification in pursuance of Government Order under Rule 23 of the Uttar Pradesh Minor Minerals (Concession) Rules, 1963 for auction of mines of sand, boulders etc. The auction was postponed. The appellant, one of the tenderers, alleged that she was not allowed to participate in the auction in a *mala fide* manner with a view to favour respondent No.5. A writ petition styled as Public Interest Litigation was filed by her praying for investigation into the alleged irregularities. The High Court dismissed the petition holding that the successful bidder was not a party to the Public Interest Litigation; and that the appellant cannot file the Public Interest Litigation when she herself claimed to be an intending bidder. Hence the present appeal.

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Appellant contended that the High Court erroneously proceeded on a highly technical basis without appreciating that the public interest was involved; and that the State's largesse was being given for a very paltry amount.

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The respondents submitted that the High Court rightly observed that

the petition though styled as a PIL was nothing but an attempt to misguide the Court; that there was no public interest involved when the appellant herself was an intending bidder; and that a group of persons, including the appellant, have challenged the legality of the auction by filing a Writ Petition which is pending in the High Court.

Dismissing the appeal, the Court

HELD: 1.1. There must be real and genuine public interest involved in the litigation and not merely an adventure of knight errant borne out of wishful thinking. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting *bona fide* and having sufficient interest in the proceeding of public interest litigation will alone have a *locus standi* and can approach the Court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. [467-B-C]

The Janta Dal v. H.S. Chowdhary, [1992] 4 SCC 305 and *Kazi Lhendup Dorji v. Central Bureau of Investigation*, [1994] Supp 2 SCC 116, relied on.

1.2. A writ petitioner who comes to the Court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective. [467-D]

Ramjas Foundation v. Union of India, AIR (1993) SC 852 and *K.R. Srinivas v. R.M. Premchand*, [1994] 6 SCC 620, relied on.

Stroud's Judicial Dictionary, Volume 4 (IV Edition) and Black's Law Dictionary (Sixth Edition), referred to.

1.3. 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

A on personal vendetta. [469-F-G]

1.4. The Court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique considerations. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. [469-G-H; 470-A]

Public Interest Law, USA, 1976 Report of the Council for Public Interest Law set up by Ford Foundation, referred to.

C 1.5. The Court has to be satisfied about the credentials of the applicant; the prima facie correctness or nature of information given by him; 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. [470-E-F-G]

F *State of Maharashtra v. Prabhu*, [1994] 2 SCC 481; *Andhra Pradesh State Financial Corporation v. M/s GAR Re-Rolling Mills and Anr.*, AIR (1994) SC 2151 and *Dr. B.K. Subbarao v. Mr. K. Parasaran*, (1996) 7 JT 265, referred to.

G 1.6. 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, Courts are entertaining such petitions and wasting valuable judicial time which could be otherwise utilized for disposal of genuine cases. [471-C-D]

H *Dr. Duryodhan Sahu and Ors. v. Jitendra Kumar Mishra and Ors.*, AIR (1999) SC 114, referred to.

1.7. It would be desirable for the Courts to filter out the frivolous petitions and dismiss them with costs so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts. [471-H; 472-A]

S.P. Gupta v. Union of India, [1981] Supp. SCC 87; *State of H.P. v. A Parent of a Student of Medical College, Simla and Ors.*, [1985] 3 SCC 169; *Ashok Kumar Pandey v. State of West Bengal*, [2004] 3 SCC 349; *Dr. B. Singh v. Union of India & Ors.*, [2004] 3 SCC 363 and *Dattaraj Nathuji Thaware v. State of Maharashtra and Ors.*, [2005] 1 SCC 590, referred to.

2. In the instant case, the appellant has styled the petition as Public Interest Litigation, though it relates to a tender where she herself claims to be a tenderer. In another petition, questioning legality of the auction, she is a party. The High Court was perfectly justified in dismissing the writ petition styled as a PIL. It is clarified that Writ Petition No. 349/2003 which is stated to be pending shall be considered in its own perspective in accordance with law. [472-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6527 of 2004.

From the Judgment and Order dated 7.8.2003 of High Court of Judicature at Allahabad in C.M.W.P. No. 33910/2003.

Sunil Kumar Jain for the Appellant.

Rekha Pandey and Sushma Suri for the Respondent - Ministry of Home Affairs.

Krishan Mahajan, Kiran Bhardwaj, V.K. Verma, D.S. Mahra and M.P. Shorawala for the Respondent Union of India.

S.W.A. Qadri, Mohit Kumar, Pradeep Misra, Jitendra Mohan Sharma, Shiv Sagar Tiwari and Ambar Qamaruddin for the Respondent - State of U.P.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Challenge in this appeal is to the judgment rendered by a Division Bench of the Allahabad High Court by which the Writ Petition styled as Public Interest Litigation (in short 'PIL') was held to be not maintainable and was dismissed.

A In the writ petition the stand taken by the appellant was as follows:

Respondent No.4 had issued a Notification on 20.11.2002 in pursuance of Government Order dated 2.11.2002 under Rule 23 of the Uttar Pradesh Minor Minerals (Concession) Rules, 1963 (in short the 'Rules') for auction of mines of sand, boulders etc. located in the district of Saharanpur. As per the

B Notification the auction was to be held on 23.12.2002, but the same was postponed to 30.12.2002. According to the appellant, she was permitted to take part in the auction on 23.12.2002 but subsequently she was not allowed to participate and with a view to favour respondent No.5, who was politically well connected, in a *mala fide* manner the auction was held. A writ petition
C was filed styled as PIL for direction to the authorities for investigating into the alleged irregularities. The High Court noted that one Mohd. Iqbal was the successful bidder who was not a party in the PIL. In any event, the appellant cannot file the PIL when she herself claimed to be an intending bidder. The writ petition was accordingly dismissed.

D In support of the appeal, it has been submitted that the High Court erroneously proceeded on a highly technical basis without appreciating that the public interest was involved, the State's largesse was being given for a very paltry amount and, therefore, writ application should not have been dismissed.

E Learned counsel for the respondents on the other hand supported the order stating that the High Court rightly observed that the petition though styled as a PIL was nothing but an attempt to misguide the Court. There was no public interest involved and in fact when the appellant was herself an intending bidder according to her own saying and as such the petition could
F not have been maintained. Additionally, a group of persons have challenged the legality of the auction in Writ Petition No.349 of 2003 which is pending and the appellant is petitioner No.11 in the said writ petition.

When there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, said petition
G is to be thrown out. Before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding public interest aspect. Public Interest Litigation which has now come to occupy an important field in the administration of law should not be "publicity interest litigation" or "private interest litigation" or "politics interest litigation" or the latest trend
H "paise income litigation". The High Court has found that the case at hand belongs to the second category. If not properly regulated and abuse averted,

it becomes also a tool in unscrupulous hands to release vendetta and wreck vengeance, as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of knight errant borne out of wishful thinking. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting *bona fide* and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the Court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. These aspects were highlighted by this Court in *The Janta Dal v. H.S. Chowdhary*, [1992] 4 SCC 305 and *Kazi Lhendup Dorji v. Central Bureau of Investigation*, [1994] Supp 2 SCC 116. A writ petitioner who comes to the Court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective. (See *Ramjas Foundation v. Union of India*, AIR (1993) SC 852 and *K.R. Srinivas v. R.M. Premchand*, [1994] 6 SCC 620).

It is necessary to take note of the meaning of expression 'public interest litigation'. In Stroud's Judicial Dictionary, Volume 4 (IV Edition), 'Public Interest' is defined thus:

"Public Interest (1) a matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected."

In Black's Law Dictionary (Sixth Edition), "public interest" is defined as follows:

"Public Interest something in which the public, or some interest by which their legal rights or liabilities are affected. It does not mean anything the particular localities, which may be affected by the matters in question. Interest shared by national government...."

In *Janata Dal* case (supra) this Court considered the scope of public interest litigation. In para 52 of the said judgment, after considering what is public interest, has laid down as follows:

"The expression 'litigation' means a legal action including all

A proceedings therein initiated in a Court of law for the enforcement of right or seeking a remedy. Therefore, lexically the expression “PIL” means the 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.”

B In paras 60, 61 and 62 of the said judgment, it was pointed out as follows:

C “Be that as it may, it is needless to emphasis that the requirement of *locus standi* of a party to a litigation is mandatory, because the legal capacity of the party to any litigation whether in private or public action in relation to any specific remedy sought for has to be primarily ascertained at the threshold.”

D In para 96 of the said judgment, it has further been pointed out as follows:

E “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.”

In subsequent paras of the said judgment, it was observed as follows:

F “It is thus clear that only a person acting *bona fide* and having sufficient interest in the proceeding of PIL will alone have as *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”.

H It is depressing to note that on account of such trumpety 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 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.

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. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the court is acting *bona fide* and not for personal gain or private motive or political motivation or other oblique considerations. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper

A motives, and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

B The Council for Public Interest Law set up by the Ford Foundation in USA defined the “public interest litigation” in its report of Public Interest Law, USA, 1976 as follows:

C “Public Interest Law is the name that has recently been given to efforts provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others.”

D 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.

F 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.

G Courts must do justice by promotion of good faith, and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. (See *State of Maharashtra v. Prabhu*, [1994] 2 SCC 481, and *Andhra Pradesh State Financial Corporation v. M/s GAR Re-Rolling Mills and Anr.*, AIR (1994) SC 2151. No litigant has

H a right to unlimited draught on the Court time and public money in order to

get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. (See *Dr. B.K. Subbarao v. Mr. K. Parasaran*, (1996) 7 JT 265). Today people rush to Courts to file cases in profusion under this attractive name of public interest. They must inspire confidence in Courts and among the public.

As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. 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 litigations. 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, Courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in *Dr. Duryodhan Sahu and Ors. v. Jitendra Kumar Mishra and Ors.*, AIR (1999) SC 114, this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters by competitors continue unabated in the Courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Apart from the sinister manner, if any, of getting such copies, the real brain or force behind such cases would get exposed to find out the truth and motive behind the petition. Whenever such frivolous pleas, as noted, are taken to explain possession, the Court should do well not only to dismiss the petitions but also to impose exemplary costs. It is also noticed that petitions are based on newspaper reports without any attempt to verify their authenticity. As observed by this Court in several cases newspaper reports do not constitute evidence. A petition based on unconfirmed news reports, without verifying their authenticity should normally be entertained. As noted above, such petitions do not provide any basis for verifying the correctness of statements made and information given in the petition. It would be desirable for the Courts to filter out the frivolous petitions and dismiss them with costs as afore-stated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts.

A In *S.P. Gupta v. Union of India*, [1981] Supp. SCC 87, it was emphatically pointed out that the relaxation of the rule of *locus standi* in the field of PIL does not give any right to a busybody or meddlesome interloper to approach the Court under the guise of a public interest litigant. He has also left the following note of caution: (SCC p.219, para 24)

B “But we must be careful to see that the member of the public, who approaches the court in cases of this kind, is acting *bona fide* 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.”

C In *State of H.P. v. A Parent of a Student of Medical College, Simla and Ors.*, [1985] 3 SCC 169, it has been said that public interest litigation is a weapon which has to be used with great care and circumspection.

D These aspects have been highlighted in *Ashok Kumar Pandey v. State of West Bengal*, [2004] 3 SCC 349, *Dr. B. Singh v. Union of India & Ors.*, [2004] 3 SCC 363 and *Dattaraj Nathuji Thaware v. State of Maharashtra and Ors.*, [2005] 1 SCC 590.

E In the instant case, the appellant has styled the petition as PIL though it relates to a tender where she herself claims to be a tenderer. In another petition, questioning legality of the auction, she is a party. The High Court was perfectly justified in dismissing the writ petition styled as a PIL. We make it clear that Writ Petition No.349/2003 which is stated to be pending shall be considered in its own perspective in accordance with law. We express no opinion on the merits of the said writ petition.

F The appeal is accordingly dismissed. No costs.

S.K.S.

Appeal dismissed.