

KUNGA NIMA LEPCHA & ORS. A

v.

STATE OF SIKKIM & ORS.

(Writ Petition (Civil) No. 353 of 2006)

MARCH 25, 2010 B

[K.G. BALAKRISHNAN CJI, P. SATHASIVAM AND J.M. PANCHAL, JJ.]

Constitution of India, 1950: Article 32 – Public Interest Litigation – Against Chief Minister – By persons belonging to political parties – Alleging possession of assets disproportionate to known source of income and criminal misconduct – Seeking initiation of investigation by CBI – Held: The writ petition in the nature of PIL not maintainable – The status of petitioners as belonging to political party leads to apprehension that the petition is not the result of public-spirited concern – Writ jurisdiction can be exercised only when there is violation of fundamental rights and not where statutory remedies are available – Allegation of infringement of fundamental rights in the instant case is vague – Alleged acts cannot be automatically equated with violation of Article 14 – The alleged acts can come within the ambit of statutory offences under Prevention of Corruption Act – Proceedings can be brought before writ court only on exhaustion of ordinary remedies – Court cannot in exercise of jurisdiction under Article 32 direct initiation of investigation – The scope of intervention by court of first instance is controlled by statutory provisions i.e. Cr.P.C. – Direction for initiation of investigation by the Highest Court would also prejudice the accused – Even otherwise, High Court is the more appropriate forum for examining the allegations in the instant case – Public Interest Litigation – Investigation – Prevention of Corruption Act, 1988 – Constitution of India, 1950 – Article 14 – Code of Criminal Procedure, 1973 – Locus Standi.

A The present writ petition was filed as a Public Interest
Litigation under Article 32 of the Constitution of India,
alleging that respondent No. 2 (Chief Minister of the State)
has misused public office to amass assets
disproportionate to his known sources of income; and
B also misappropriated public money. The writ petitioner
sought writ in the nature of Mandamus directing CBI to
investigate the awarding of Government contracts and/
or work orders by respondent-State during the tenure of
respondent No. 2 as the Chief Minister. The petitioner also
C sought CBI Investigation against respondent No. 2, his
relatives and other guilty officials.

Petitioner No. 3 sought permission to withdraw from
the proceedings stating that he filed the writ petition at
the instance of former Chief Minister of the State.

D Dismissing the petition, the Court

HELD: 1. The fact that this petition was instituted at
the initiative of four individuals belonging to a political
party raises the apprehension that they were motivated
E by a sense of political rivalry rather than a public-spirited
concern about the misuse of office by the incumbent
Chief Minister. The writ jurisdiction exercised by
Supreme Court cannot be turned into an instrument of
such partisan considerations. However, even if the *locus*
F *standi* of the petitioners is accepted, keeping in mind that
allegations of corruption on the part of the incumbent
Chief Minister do touch on public interest, Supreme Court
is not the appropriate forum for seeking the initiation of
investigation. [Para 7] [794-F-G]

G 2. It is true that this Court has copious powers under
Article 32 of the Constitution for the purpose of enforcing
the rights enshrined in Part III of the Constitution.
However, the remedies evolved by way of writ jurisdiction
H are of an extraordinary nature. They cannot be granted

as a matter of due course to provide redressal in situations where statutory remedies are available. It is quite evident that the *onus* is on the petitioners to demonstrate a specific violation of any of the fundamental rights in order to seek relief under writ jurisdiction. In the present petition, the petitioners have made a rather vague argument that the alleged acts of corruption amount to an infringement of Article 14 of the Constitution of India. The guarantee of 'equal protection before the law' or 'equality before the law' is violated if there is an unreasonable discrimination between two or more individuals or between two or more classes of persons. The alleged acts of misappropriation from the public exchequer cannot be automatically equated with a violation of the guarantee of 'equal protection before the law'. The alleged acts can easily come within the ambit of statutory offences such as those of 'possession of assets disproportionate to known sources of income' as well as 'criminal misconduct' under the Prevention of Corruption Act, 1988. [Paras 9 and 10] [795-E-H; 796-A-B]

Vineet Narain v. Union of India (1998) 1 SCC 226, referred to.

3.1. The onus of launching an investigation into such matters is clearly on the investigating agencies such as the State Police, Central Bureau of Investigation (CBI) or the Central Vigilance Commission (CVC) among others. It is not proper for this Court to give directions for initiating such an investigation under its writ jurisdiction. In the past, writ jurisdiction has been used to monitor the progress of ongoing investigations or to transfer ongoing investigations from one investigating agency to another. Such directions have been given when a specific violation of fundamental rights is shown, which could be the consequence of apathy or partiality on part of

- A investigating agencies among other reasons. The writ court can only play a corrective role to ensure that the integrity of the investigation is not compromised. However, it is not viable for a writ court to order the initiation of an investigation. That function clearly lies in
- B the domain of the executive and it is upto the investigating agencies themselves to decide whether the material produced before them provides a sufficient basis to launch an investigation. It must also be borne in mind that there are provisions in Cr.P.C. which empower the
- C courts of first instance to exercise a certain degree of control over ongoing investigations. The scope for intervention by the trial court is hence controlled by statutory provisions and it is not advisable for writ courts to interfere with criminal investigations in the absence of
- D specific standards for the same. [Para 10] [796-B-H]

- 3.2. Supreme Court cannot sit in judgment over a question whether investigations should be launched against politicians for alleged acts of corruption. The Supreme Court of India functions as a Constitutional
- E Court as well as the highest appellate court in the country. If the Supreme Court gives direction for prosecution, it would cause serious prejudice to the accused, as the direction of this Court may have far reaching persuasive effect on the Court which may ultimately try the accused.
- F It is always open to the petitioners to approach the investigative agencies directly with the incriminating materials and it is for the investigative agencies to decide on the further course of action. [Para 11] [797-A-C]

- G 4. While it could be appreciated that the efforts to uncover the alleged acts of corruption may be obstructed by entrenched interests, in this particular case the petitioners would be well advised to rely on the statutory remedies. It is only on the exhaustion of ordinary
- H remedies that perhaps a proceeding can be brought

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before a writ court and in any case the High Court of Sikkim would be a far more appropriate forum for examining the allegations made in the present petition. [Para 11] [797-C-E]

Case Law Reference

(1998) 1 SCC 226 Referred to. Para 8

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 353 of 2006.

Vinod Bobde, Annam D.N. Rao, Arunabh Chowdhury, Anupam Lal Das for the Appellants.

Mohan, Parasaran, ASG, K.K. Venugopal, Alaf Ahmad, Ram Jethmalani, Sonam P. Wangdi, A.G., Mariarputham, Anukur Talwar (for Arputham, Aruna & Co.), Tufail A. Khan, B.K. Prasad (for P. Parmeswaran), P.R. Mala, Joyeta, Banerjee, Saurabh Gupta, Rajdeep Banerjee, V. Mohana for the Respondents.

The Judgment of the Court was delivered by

K. G. BALAKRISHNAN, CJI. 1. The present writ petition was instituted in this Court by way of public interest litigation under Article 32 of the Constitution of India. The petitioners have levelled some allegations against the incumbent Chief Minister of the State of Sikkim who was impleaded as Respondent No.2 herein. The crux of these allegations is that he has misused his public office to amass assets disproportionate to his known sources of income. The petitioners have also alleged that he has misappropriated a large volume of public money at the cost of the Government of India and the Government of Sikkim. The relief sought by the petitioners is the issuance of a writ of mandamus directing the Central Bureau of Investigation (CBI) to investigate the allegations that have been levelled against him.

A 2. It may be recalled that the State of Sikkim had become
 a full fledged state of the Union of India, following the enactment
 of the Thirty-sixth Amendment to the Constitution which was
 given effect in 1975. The said amendment had inserted Article
 B 371F into the constitutional text which lays down special
 provisions with respect to the governance of the State of
 Sikkim. We must also take note of the fact that even though
 the Income Tax Act, 1961 had been extended to the State of
 Sikkim in 1989, it has not been enforced till date on account
 C of the constitutionally mandated special treatment. The non-
 enforcement of the Income Tax Act is a relevant consideration
 since it entails that the income details of individuals who belong
 to and reside in Sikkim are not recorded by the Income Tax
 Department. Furthermore, the finances of the government of
 Sikkim are enhanced by the various developmental and welfare
 D schemes of Government of India. Respondent No. 2 is the
 founder President of the Sikkim Democratic Front and he has
 been serving as the Chief Minister of the State of Sikkim since
 12th December, 1994. Under his leadership, the Sikkim
 Democratic Front has been successful in the periodic elections
 held to constitute the State Legislative Assembly.

E 3. However, the petitioners have levelled some serious
 allegations of wrongdoing on part of the second respondent.
 In Annexure P-1 of the writ petition submitted before this Court,
 a list of his family members has been provided. This list refers
 F to 21 members which includes 2 wives, 4 sons, 1 daughter, 4
 brothers, 6 sisters-in-law, 1 father-in-law, and 3 brothers-in-law.
 It has been pointed out that in order to contest the elections to
 the State Legislative Assembly from the 13-Damthang
 Constituency in the year 2004, he had declared his family's
 G assets taken together to be Rs. 4,76,54,238/-. This declaration
 was made as per the requirements of the Representation of
 People Act, 1951. However, the petitioners have alleged that
 the total assets actually amount to more than Rs. 25 crores.

H 4. In Paragraph 29 of the writ petition, the petitioners have

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incorporated a detailed description of the movable and immovable assets that allegedly belong to Respondent No. 2 and his relatives. Furthermore, the petitioners have also alleged that Respondent No. 2 has acquired several immovable properties either in his own name or in the name of his relatives or in the name of his nominees by way of misappropriating funds from the public exchequer. In Annexure P-20, the petitioners have alleged that the Government of Sikkim acting through the Sikkim Power Development Corporation has misappropriated an amount of Rs. 15.38 crores from the public exchequer. The petitioners have supported these allegations by submitting that the relevant information was procured in response to applications filed under the Right to Information Act, 2005. It will also be useful to reproduce the prayer sought by the petitioners in the following words:

“(a) issuance of an appropriate writ in the nature of Mandamus commanding the Director, Central Bureau of Investigation to investigate the awarding of government contracts and/or work orders by the Respondent No. 1 State of Sikkim during the tenure of the Respondent No.2 as the Chief Minister of the State of Sikkim viz a viz amassing of huge assets and/or wealth by the Respondent No. 2 and his relatives with a direction upon it to submit its report before this Hon’ble Court within a time frame fixed by this Hon’ble Court;

(b) issuance of an appropriate writ in the nature of mandamus commanding the Director, Central Bureau of Investigation to investigate the matter against the Respondent No. 2, his relatives and other guilty officials and take appropriate legal action by way of registration of FIR under the general provisions of law and the provisions of Prevention of Corruption Act, 1988;

(c) order for rule nisi in terms of the prayers above;

A (d) pass such further order(s) and/or direction(s) as this Hon'ble Court may deem fit and proper."

5. In the course of the proceedings before this Court, Sh. Vinod Bobde, Sr. Adv. argued on behalf of the petitioners. Thereafter, Sh. Ram Jethmalani, Sr. Adv. made oral submissions on behalf of the respondents, followed by Sh. K.K. Venugopal. Sr. Adv. Thereafter, Sh. Vinod Bobde, Sr. Adv. made his submissions in rejoinder.

6. Before addressing the substance of the petitioners' submissions, it must be mentioned that there are four petitioners in this case who are serving as office-bearers of a political party in Sikkim. Petitioner No. 3 has affirmed through an affidavit dated 31st August, 2007, that they were advised to file a writ petition before this court by former Chief Minister of the State of Sikkim and currently serving as President of a political party. In fact, Petitioner No. 3 has sworn on affidavit that he had joined these proceedings as a petitioner at the instance of him. He has also cast aspersions on the motives of Sh. Kunga Nima Lepcha (Petitioner No. 1) for filing the present writ petition. In view of this position, Petitioner No. 3 had sought permission to withdraw from the proceedings.

7. The fact that this petition was instituted at the initiative of four individuals belonging to a political party raises the apprehension that they were motivated by a sense of political rivalry rather than a public-spirited concern about the misuse of office by the incumbent Chief Minister. We must of course emphasise that the writ jurisdiction exercised by this Court cannot be turned into an instrument of such partisan considerations. However, even if we were to accept the *locus standi* of the petitioners keeping in mind that allegations of corruption on part of the incumbent Chief Minister do touch on public interest, this Court is not the appropriate forum for seeking the initiation of investigation.

H 8. It is of course true that this Court has copious powers

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under Article 32 of the Constitution for the purpose of enforcing the rights enshrined in Part III of the Constitution. Over the years, this Court has creatively expanded its writ jurisdiction to provide redress against the infringement of fundamental rights and concurrently relied on Article 142 to do complete justice in the matters before it. As explained by J.S. Verma, C.J., in *Vineet Narain v. Union of India* (1998) 1 SCC 226 (Para. 49):

“49. There are ample powers conferred by Article 32 read with Article 142 to make orders which have the effect of law by virtue of Article 141 and there is mandate to all authorities to act in aid of the orders of this Court as provided in Article 144 of the Constitution. In a catena of decisions of this Court, this power has been recognized and exercised, if need be, by issuing necessary directions to fill the vacuum till such time the legislature steps in to cover the gap or the executive discharges its role...”

9. However, the remedies evolved by way of writ jurisdiction are of an extraordinary nature. They cannot be granted as a matter of due course to provide redressal in situations where statutory remedies are available. It is quite evident that the onus is on the petitioners to demonstrate a specific violation of any of the fundamental rights in order to seek relief under writ jurisdiction. In the present petition, the petitioners have made a rather vague argument that the alleged acts of corruption on part of Shri Pawan Chamling amount to an infringement of Article 14 of the Constitution of India. We do not find any merit in this assertion because the guarantee of ‘equal protection before the law’ or ‘equality before the law’ is violated if there is an unreasonable discrimination between two or more individuals or between two or more classes of persons. Clearly the alleged acts of misappropriation from the public exchequer cannot be automatically equated with a violation of the guarantee of ‘equal protection before the law’.

10. Furthermore, we must emphasise the fact that the alleged acts can easily come within the ambit of statutory

A offences such as those of 'possession of assets disproportionate to known sources of income' as well as 'criminal misconduct' under the Prevention of Corruption Act, 1988. The onus of launching an investigation into such matters is clearly on the investigating agencies such as the State
B Police, Central Bureau of Investigation (CBI) or the Central Vigilance Commission (CVC) among others. It is not proper for this court to give directions for initiating such an investigation under its writ jurisdiction. While it is true that in the past, the Supreme Court of India as well as the various High Courts have
C indeed granted remedies relating to investigations in criminal cases, we must make a careful note of the petitioners' prayer in the present case. In the past, writ jurisdiction has been used to monitor the progress of ongoing investigations or to transfer ongoing investigations from one investigating agency to another. Such directions have been given when a specific
D violation of fundamental rights is shown, which could be the consequence of apathy or partiality on part of investigating agencies among other reasons. In some cases, judicial intervention by way of writ jurisdiction is warranted on account of obstructions to the investigation process such as material
E threats to witnesses, the destruction of evidence or undue pressure from powerful interests. In all of these circumstances, the writ court can only play a corrective role to ensure that the integrity of the investigation is not compromised. However, it is not viable for a writ court to order the initiation of an
F investigation. That function clearly lies in the domain of the executive and it is upto the investigating agencies themselves to decide whether the material produced before them provides a sufficient basis to launch an investigation. It must also be borne in mind that there are provisions in the Code of Criminal
G Procedure which empower the courts of first instance to exercise a certain degree of control over ongoing investigations. The scope for intervention by the trial court is hence controlled by statutory provisions and it is not advisable for writ courts to interfere with criminal investigations in the absence of specific
H standards for the same.

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11. Hence it is our conclusion that the petitioners' prayer cannot be granted. This court cannot sit in judgment over whether investigations should be launched against politicians for alleged acts of corruption. The Supreme Court of India functions as a Constitutional Court as well as the highest appellate court in the country. If the Supreme Court gives direction for prosecution, it would cause serious prejudice to the accused, as the direction of this Court may have far reaching persuasive effect on the Court which may ultimately try the accused. It is always open to the petitioners to approach the investigative agencies directly with the incriminating materials and it is for the investigative agencies to decide on the further course of action. While we can appreciate the general claim that the efforts to uncover the alleged acts of corruption may be obstructed by entrenched interests, in this particular case the petitioners would be well advised to rely on the statutory remedies. It is only on the exhaustion of ordinary remedies that perhaps a proceeding can be brought before a writ court and in any case the High Court of Sikkim would be a far more appropriate forum for examining the allegations made in the present petition.

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12. Hence, the writ petition is dismissed, however with no order as to costs.

K.K.T.

Writ Petition dismissed.