

Sunil Kumar Singh Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Sep-17-2001

Reported in : 2002(1)AWC328

Judge : Jagdish Bhalla and ;M.A. Khan, JJ.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Writ Petition No. 3856 (M/B) of 2001

Appellant : Sunil Kumar Singh

Respondent : State of U.P. and ors.

Advocate for Def. : C.S.C.

Advocate for Pet/Ap. : Rajesh Singh Chauhan and ;Anil Kumar Singh, Advs.

Disposition : Petition dismissed

Judgement :

Jagdish Bhalla, J.

1. The petitioner claims himself to be a free lance Journalist and has approached this Court through this writ petition, in the form of Pubic Interest Litigation and prays that opposite parties be directed to place the entire records with respect to sale of old Aircrafts and purchase of the new Aircrafts in the year 1989 in Civil

Aviation Department, before this Court in a sealed cover including the proceedings showing the action, if any. taken after the judgment and order dated 2.2.2001 passed in Writ Petition No. 338 (MB) of 2001. Ashish Kumar Singh v. State of U. P. and Ors., and further it has been prayed that opposite parties be commanded to hold an enquiry about the deal relating to sale of old Aircrafts and purchase of the new Aircrafts in the year 1989 through an independent agency preferably by C.B.I.

2. This is the fourth writ petition on the same subject-matter. Accordingly, a preliminary objection has been raised by the learned standing counsel regarding maintainability of this writ petition. In para 3 of the writ petition, it has been admitted by the petitioner that earlier three writ petitions were filed. From the records produced before this Court, the details of the three writ petitions as indicated in para 3 of the writ petition are as follows :

- (i) Writ Petition No. 2084 (MB) of 1998. Rajiv Chaturvedi v. State of U. P. and Ors.,
- (ii) Writ Petition No. 2390 (MB) of 1998, Rajiv Chaturvedi v. State of U. P. and Ors.,
- (iii) Writ Petition No. 338 (MB) of 2001, Ashish Kumar Singh v. State of U, P. and Ors.

3. in Writ Petition No. 2084 (MB) of 1998, Rajiv Chaturvedi v. State of U. P. and Ors., was filed on the basis of news item published in aHindi daily 'Hindustan' and it was prayed that a writ in the nature of mandamus be issued commanding the opposite parties to register the first information report sent by the petitioner and the case be investigated by an independent agency, preferably, by the C.B.I. The said writ petition was dismissed by a Division Bench of this Court on 15.5.1999. The order passed by this Court is as follows :

'By means of the present writ petition, the petitioner prays to issue a writ order or direction in the nature of mandamus commanding the opposite parties to register the first information report sent by the petitioner as contained in Annexure-4 to the writ petition and to get the case investigated by some independent agency preferably by C.B.I.

'So far as the contention of the case to be investigated by C.B.I. is concerned, the petitioner may approach the State Government who may recommend the case for which no direction is necessary from this Court. So far as the first contention is concerned, we are of the view that in case the F.I.R. has not been registered, the petitioner may approach the C.J.M. concerned under Section 156(3), Cr. P.C. who may order for investigation. With the above observation, the writ petition is dismissed.'

4. In Writ Petition No. 2390 (MB) of 1998, Rajiv Chaturvedi v. State of U. P. and Ors., was the second writ petition in this connection. It was also in the shape of public interest litigation and again based on the report published in a Hindi daily 'Hindustan'. Even in this writ Petition, identical prayer was made and this Court by order dated 6.8.1998 dismissed the writ petition. The order is quoted below :

'This petition on the Public Interest Litigation side has been preferred by a practicing advocate of this Court, directing the opposite parties--State of U. P., Director General of Police and Principal Secretary of Home, to register the F.I.R. which has been annexed with the petition and for directing investigation to be done by the Central Bureau of investigation.

The ostensible purpose shown is for lodging the F.I.R. against an advisor of State Civil Aviation Directorate, U P. Government. We are deliberately refraining from naming that officer in this order. The avowed object of this petition is to bring the highly placed corrupt officers to book but the real object appears to be what is mentioned in Paragraph 6 of the proposed F.I.R. regarding which already a writ petition is pending. It appears that political scores are sought to be met through this Court and by using the public interest litigation, the petitioner wants to convert this Court into a political arena. Most of the allegations made are too vague and too general to be looked into. The petitioner has not approached the learned Magistrate under Section 156(3) of the Code of Criminal Procedure. The Supreme Court in the case of All India Institute of Medical Sciences Employees Union v. Union of India and Ors., 1997 JIC 402, has laid down that the remedy for the petitioner in such cases is to approach the learned Magistrate by filing a criminal complaint. In the cases of S.P. Anand v. H.D. Deve Gowda, 1997 (1) AWC 2.117

(SC) (NOC) : AIR 1997 SC 272 and Janta Dal v. H. S. Chowdhary and Ors. AIR 1993 SC 892, the Supreme Court has warned about misuse of the Public Interest Litigation saying that it cannot be used for settling political scores or political matters.

After hearing learned counsel for the petitioner and learned Government advocate and after going through the proposed F.I.R., we are satisfied that this is the case where forum of Public Interest Litigation is being misused.

There is no justification for entertaining this writ petition which is dismissed accordingly.'

5. Not satisfied by the two writ petitions, indicated hereinabove, one Ashish Kumar Singh came forward and preferred a third writ petition (Writ Petition No, 338 (MB) of 2001) on the same subject. It too was based on the news items dated 8.9.2000 published in Hindi daily 'Hindustan' and it was prayed that a direction in the nature of mandamus be issued directing the opposite parties to keep the complete records of entire deal in a sealed cover and the same be brought to the notice of this Court and further be directed to an independent body, preferably, C.B.I., to enquire into the deal, namely. Trade -in-Offer.

6. Again, this Court vide its detailed order dated 2.2.2001, dismissed the writ petition by the following order :

'Present petition is filed as P.I.L. by one Ashish Kumar Singh praying that writ of mandamus be issued directing the opposite parties to conduct an enquiry about the deal, namely, Trade-in-Offer through an independent agency like C.B.I. and he also prayed that till then whole record be sealed.

The petitioner is alleged to be a member of one Society, namely, Gramin Prashikshan Evam Prabandhan Sansthan, and stated that one of the objects of the Society is to take shelter of the Court for public interest. The object of the scheme of the Society is not on record. The contention of the petitioner's counsel is that two news items were published on 8.9.2000 and 12.11.2000 contained in Annexures-3 and 4 and after reading the said publication the petitioner filed the

present writ petition. Contention of the petitioner's counsel is that the State of U. P. handed over four Aircrafts and purchased one Aircraft deducting nominal value of the old Aircraft which showsthat there was bungling of huge amount in the said deal. It is not disputed that the deal took place in 1989. Contention of petitioner's counsel is that he came to know about this deal only after reading the above mentioned news items and after reading the same he filed the present petition. It is not disputed that the petitioner, after reading the newspaper did not approach the State Government or any other authority of the State to conduct an enquiry or tried to lodge a report with the police. From a perusal of the writ petition at this juncture it cannot be said that petitioner, after reading the newspaper, made any enquiry before filing the present writ petition.

Hon'ble the Supreme Court in the case of State of Haryana and Anr. v. Chanan Mat etc., AIR 1976 SC 1654, took the view :

Any petitioner who applied for a writ or order in the nature of a mandamus should comply with a well-known rule of practice ordinarily, first call upon the authority concerned to discharge its legal obligation and show that it has refused or neglected to carry it out within a reasonable time before applying to a Court for such an order even where the alleged obligation is established.' Apart from this, earlier also a Writ Petition bearing No. 2390 (MB) of 1998 was filed by one of the advocates of this Court, namely, Sri Rajiv Chaturvedi, in which present dispute was also included. The said writ petition was dismissed by a Bench of this Court vide order dated 6.8.1998. Apart from this Writ Petition No. 2084 (MB) of 1998 was also filed by Rajiv Chaturvedi, in which other allegations were made and the said writ petition was disposed by a Division Bench of this Court directing the petitioner to approach the authority first or move an application under Section 156(3), Cr. P.C. before the Chief Judicial Magistrate concerned for registration of a case. In spite of these orders no further steps have been taken nor any application under Section 156(3), Cr. P.C. was moved. The matter is old one and in these circumstances, it will be proper for the petitioner to approach the authority first and thereafter if no action is taken, and if so advised, then move this Court. Learned counsel for the petitioner also pointed out that there is a news item contained in Annexure-3 which shows that the State Government gave a statement that the

State will hold an enquiry in this respect but up-till now no such enquiry was conducted. It will be proper for the petitioner to point out these facts to the State Government and it is expected that the State Government may take suitable action in accordance with law. The writ petition does not have force.

With these observations the writ petition is disposed of finally.'

7. Now the present writ petition has been preferred which is fourth in a row on the same subject-matter, by a Journalist. From perusal of the judgment and order dated 2.2.2001 passed in Writ Petition No. 338 (MB) of 2001, it is crystal clear that this Court in its earlier decision dated 6.8.1998 passed in Writ Petition No. 2390 (MB) of 1998. *Rajiv Chaturvedi v. State of U. P. and Ors.*, directed the petitioner to approach the authority concerned first and move an application under Section 156(3), Cr. P.C. before the Chief Judicial Magistrate concerned for registration of a criminal case. However, neither in Writ Petition No. 338 (MB) of 2001, nor in the present writ petition, it has been indicated as to what steps were taken by the petitioner and he claims to be a responsible citizen and was/is agitating the Public Interest Litigation in the interest of public. Again, this Court permitted the petitioner in W. P. No. 338 (MB) of 2001 to approach the State Authorities with a request to discharge their legal obligation and only thereafter to approach this Court in case no heed is paid to his request by the authorities. However, neither *Rajiv Chaturvedi* nor *Ashish Kumar Singh* has approached this Court after making any representation to the State Government to hold an enquiry. Perusal of the judgment dated 2.2.2001 shows that it came to the notice of the petitioner through news items that a statement was made on behalf of the State Government that an enquiry will be held in this respect. The record produced before this Court indicates that the State Government had taken a decision to conduct an enquiry and the Government order was issued in this connection on 14.2.2001 and in the process, the State Government constituted a Committee to scrutinize financial/administrative decisions involved in various issues raised in different Public Interest Litigation petitions before this Court with regard to the activities in the State Civil Aviation Department. The points which were to be scrutinized by the State Committee are as under :

(1) 'Whether there was any administrative or financial irregularity in 'Trade-in-Offer' deal concluded in 1989. And whether any mediator firm/company took part in the said deal.

(2) Whether the Comptroller and Auditor General of India has pointed out any scam or misappropriation in para 2.5.2 of his report of year ended on 31.3.1997 and the factual position thereof.

(3) Whether the flight of State Plane from Lucknow to New Delhi and back on 19.6.1998 was authorized.

(4) Scrutiny of factual positions of various points mentioned in proposed F.I.R. annexed with Writ Petition No. 2390 (MB) of 1998.'

8. The said Committee after examining the matter in detail by considering all pros and cons submitted its recommendation to the State Government which is as under :

'(1) There was no administrative or financial irregularity in 'Trade-in-Offer' deal concluded in 1989 nor any mediator firm/company was involved in the said deal. The allegation of dubious dealing or misappropriation of public money is baseless.

(2) No case of misappropriation of fund or embezzlement has been made out in para 2.5.2 of the report of C.A.G. for year ending 31.3.1997. The allegations made out in the writ petition are fictitious and misleading.

(3) The flight of the State Plane on 19.6.1998 from Lucknow to New Delhi and back was authorized.

(4) The allegations of making dubious calls to Pakistan from the telephones of the Directorate of State Civil Aviation and that of carrying foreigners and a lady to border area by State owned Dauphin Helicopter are baseless.

(5) The allegation of connection of employees with I.S.I. agent or wanted mafia has no substance.'

9. From the record referred hereinabove, it is crystal clear that a detailed enquiry has been held and on the basis of the recommendation, the State has already taken a decision. We further find that filing of the Public Interest Litigation with respect to the dispute in question started when one particular journalist reported the matter in Hindi daily 'Hindustan'. This Court while dismissing the Writ Petition No. 2390 (MB) of 1998. *Rajiv Chaturvedi v. State of U. P. and Ors.*, categorically held that the forum of Public Interest Litigation is being misused. However, inspite of it, first Sunil Kumar Singh filed 3rd Writ Petition No. 338 (MB) of 2001 and thereafter the present writ petition was filed. It appears that certain persons were only interested in approaching this Court under Article 226 of the [Constitution of India](#) for interference by misusing the forum of Public Interest Litigation otherwise the present petition and the W. P. No. 338 (MB) of 2001 would not have been filed. The present petitioner has also not taken any steps to find out that whether any follow-up action is taken by Ashish Kumar Singh petitioner of W. P. No. 338 (MB) of 2001 in light of the orders passed by this Court on 2.2.2001. Further, the present petitioner has not made any efforts to find out with respect to the inquiry Committee referred to hereinabove and the decision taken by the State Government. No efforts, as mentioned above, were made by the present petitioner who otherwise is a responsible member of the Society being the free lance journalist whereas for the preparation and filing of the Public Interest Litigation, we feel, there is much more responsibility on the shoulders of the person approaching the Court as well as on the shoulders of his counsel who shall first investigate the matter, collect all the data, come with specific allegations failing which spirit of filing Public Interest Litigation is bound to be diluted and unfortunately, in the present case without taking any such steps the petitioner had rushed to this Court ignoring the earlier decision passed by this Court in the identical matter and in the process, he again misused the forum of Public Interest Litigation. In recent past the law of Public Interest Litigation has undergone a considerable change and it is expected from the person who is approaching this Court under Article 226 of the [Constitution of India](#) to come with clean hands without any ulterior design, motive or vested interest for gaining cheap publicity for himself or for any other person or to tarnish the image of a particular person. It has also been noticed on several occasions that under the garb of Public Interest Litigation, writ petitions have been

filed under disguise with some ulterior motive or purpose. We are of the opinion that the present writ petition falls in this category only.

10. From the submissions made on behalf of the petitioner, it is evident that the petitioner has not done his home-work for approaching this Court by filing Public Interest Litigation and all the guidelines in this connection have gone to deaf ears. Petitioner without making any inquiry had filed an affidavit unnecessarily making wild allegations against the State Government that 6 months have passed since the judgment passed in the 3rd writ petition, nothing has been done and further alleged that in the process, it is apparent that the State Government is trying to save guilty persons. In fact in light of above discussions, the allegation of the petitioner has no foundation. This clearly indicates that the petitioner is being used as dummy and has filed this petition under disguise with some ulterior motive to tarnish the image of the State Government or its officers who are heading the department concerned.

11. We find that the petitioner has approached this Court by relying upon an article dated 18.7.2001 published in Hindi daily 'Jansatta' wherein it was mentioned that if the State Government does not make any enquiry in this matter, the High Court may interfere in the matter. Neither the correspondent who is author of the above article published in news daily nor the petitioner who himself is a journalist has tried to make any effort to find out as to what action was taken by the State Government in the matter. Such action/omission on the part of the incumbent coming in the Public Interest Litigation cannot be tolerated because its repercussion would be diluting the concept of Public Interest Litigation and in the process, scandalizing the issues which had already been enquired into and finally decided.

12. From the conduct of the petitioner and the status he enjoys, one thing is established that the petitioner has not taken this Public Interest Litigation seriously by making efforts to find out the truth. The matter has been enquired into in detail by a Committee constituted by the State Government and the recommendations of the Committee have already been accepted by the State Government.

13. In the light of the above, we find that the writ petition has been filed for gaining cheap popularity and, therefore, it is a motivated petition. The petitioner has not taken utmost care which should have been taken by him before filing this Public Interest Litigation.

14. We are of the considered opinion that the Public Interest Litigation has been welcomed by the Society at large as an effective tool in the hands of the citizens in the matter relating to Public Interest. We further feel that it should be resorted to with utmost care and caution. The petitioner has failed to rise up to the barometer fixed by the Apex Court in this connection.

15. The Public Interest Litigation has come to its age due to the intervention of the Apex Court and even by the High Courts, the public grievances have been redressed. Initially, the evolution of Public Interest litigation started in a very low profile manner and no terminology was given to such litigation. In this connection, one of the Pioneer judgments was in *Mumbai Kamgar Sabha v. Abdul Bhai Faizulla Bhai*, (1976) 3 SCC 832, and thereafter various cases like 'public handcuffing of accused', 'atrocities in jail including blinding of undertrials'. One of the interesting feature was that the journalists were taking lead in such cases after doing their research.

16. The meaning of 'Public Interest Litigation' has been dealt with in *Janta Dal v. H. S. Chowdhary and Ors.*, (1992) 4 SCC 305, which is as under :

'Public Interest.--(1) A Matter of public or general interest does not mean that which is interesting as gratifying curiosity or a lover 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'.

Public Interest.--Something in which the public, the community at large, has some pecuniary interest, or some interest with which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interest of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affair . of local, state or national Government.'

17. The Hon'ble Supreme Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of the doctrine of P.I.L. 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 busybody 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. 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. Today public spirited litigants rush to Courts to file cases in profusion under this attractive name (PIL). They must inspire confidence in Courts and among the public. They must be above suspicion.

18. We are of the considered opinion that the Court should deal the frivolous litigation with iron hands and in the process, should not permit the aims and objects of the public interest litigation to be diluted. The ongoing trend of the law courts clearly indicates that while recognizing the importance of public interest litigation, the Courts are cautious about its misuse by any unscrupulous and non-serious petitions. The public at large must get a signal from our Courts that in case, any such petition is found to be on wrong foot, its petitioner would not be spared and no person would be permitted to file any such petition for either personal gain or getting cheap publicity. The urge of such move under the garb of public interest litigation should be curbed at its foot hold.

19. We find that this is the fourth petition on almost the same subject-matter and the petitioner being the free lance journalist had much more responsibility, so was of his counsel, but both of them failed to carry out the norms laid down by various judgments of this Court in this regard. We are of the further opinion that from the conduct of the petitioner and the status he enjoys, it is established that the petitioner has not taken this Public interest Litigation seriously and misused the forum for some ulterior motive. Accordingly, we impose a cost of Rs. 2,000 which is to be deposited by the petitioner within a period of 3 weeks. After the same is

remitted to the Registry, it shall transfer the same to the State Legal Authorities to be used in the interest of poor litigants.

20. In light of above the writ petition is dismissed with costs fixed at Rs. 2.000.

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