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Court : Jharkhand

Decided On : Feb-18-2009

Reported in : [2009(2)JCR299(Jhr)]

Judge : M.Y. Eqbal and; Jaya Roy, JJ.

Appellant : Manoj Kumar and anr.

Respondent : The State of Jharkhand and ors.

Advocate for Pet/Ap. : Mr. Mahesh Tiwari

Disposition : Application dismissed

Judgement :

1. By order dated 9.1.2009 we expressed our desire to hear the counsels as to whether once a public interest litigation has been filed, the petitioners claiming themselves to be social activists can withdraw such application as a matter of right.

2. We have heard Mr. Mahesh Tiwari, learned Counsel for the petitioners and perused the interlocutory applications, wherein a prayer has-been made on behalf of the petitioners to withdraw the writ petition, which was filed by way of public interest litigation.

3. In this writ petition filed by way of public interest litigation, the petitioners have challenged the appointment of respondent No. 5, Amar Narayan Singh, Electrical Superintending Engineer of the Jharkhand State Electricity Board as a third member of the Vidyut Upbhokta Shikayat Niwaran Forum. According to the petitionee, the said appointment is contrary to the provisions of the guidelines for establishment of the forum for redressal of the grievances of the consumers and Electricity Ombudsman Regulation, 2005 issued by Jharkhand State Electricity Regulatory Commission, Ranchi, vide Notification dated 6.4.2005.

4. The question as to whether, as a matter of right, the petitioner can withdraw a petition filed by way of public interest litigation, is no longer *res integra*. The Supreme Court in the case of *Sheela Barse v. Union of India* (1988)4 SCC 226 observed:

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

36. The third ground is that the proceedings are brought as a 'voluntary action' and that applicant is entitled to sustain her right to be the 'petitioner-in-person' in a public interest litigation and that the proceedings cannot be proceeded with after delinking her from the proceedings. This again proceeds on certain fallacies as to the rights of a person who brings a public interest litigation. Any recognition of any such vested right in the persons who initiate such proceedings is to introduce a new and potentially harmful element in the judicial administration of this form of public law remedy. That apart what is implicit in the assertion of the applicant is the appropriation to herself of the right and wisdom to determine the course the proceedings are to or should take and its pattern. This cannot be recognized. In the present proceedings the court has already gone through and has initiated an elaborate exercise as indicated in the orders excerpted earlier. The petition cannot be permitted to be abandoned at this stage, only a private litigant can abandon his

claims.

5. In the light of the aforesaid decision and also the subsequent decision of the Supreme Court, Mr. (sic) fairly submitted that once the public cause is brought to the notice of the court, by way of public interest litigation, the petitioners cannot, as a matter of right, withdraw the writ petition.

6. For the reason aforesaid, both the Interlocutory applications are dismissed.

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