

Tapas Kumar Chatterjee Vs. State

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Court : Kolkata

Decided On : Feb-22-2008

Reported in : (2008)1CALLT499(HC)

Judge : Surinder Singh Nijjar, C.J. and ;Pinaki Chandra Ghosh, J.

Acts : [Constitution of India](#) - Article 21

Appeal No. : W.P. 3328(W) of 2008

Appellant : Tapas Kumar Chatterjee

Respondent : State

Advocate for Def. : Manick Chandra Das, ;Manas Das and ;Sumana Sha, Advs. for Respondent Nos. 10 and 11, ;Subrata Mukherjee and ;Basabi Roy Chowdhury, Advs. for Respondent No. 12 and ;Balai Chandra Roy, ;Sandip Srimani a

Advocate for Pet/Ap. : Party-in-Person

Disposition : Petition dismissed

Judgement :

Surinder Singh Nijjar, C.J.

1. We have heard the petitioner in person, who is an Advocate of this Court. He has filed this writ petition purportedly claiming to be in public interest. He has

submitted that the book fair which is scheduled to be held with effect from 15th March, 2008 till 10th March, 2008 at Salt Lake City would not be in public interest.

2. We have perused the writ petition. We are of the considered opinion that the writ petition does not disclose any cause of action to enable the petitioner to present the writ petition as a public interest litigation. The petitioner has vehemently argued that outside the stadium where the Book Fair is scheduled to be held would be an abuse of the stadium which is reserved for the exclusive use of the sportsmen. In support of the submissions the petitioner has relied on a Judgment of the Supreme Court in the case of J. Jayalalitha v. Government of Tamil Nadu reported in (1991)1 SCC 53. We have perused the aforesaid Judgment. We are of the considered opinion that the law laid down in the aforesaid Judgment would not be applicable in the facts and circumstances of the present case.

3. In that case the State Government had by a notification banned the use of one Nehru Stadium for conducting activities other than sports and games by virtue of an order dated 9.11.82 issued by the State Government. This was applicable not only to Nehru Stadium but other Stadiums in the State as well. The High Court of Madras had granted permission to the Chief Minister to celebrate his 71st birth day. The permission granted by the Madras High Court was only modified by the Supreme Court in appeal from the interim order passed by the Madras High Court. The function was permitted to be held, in the peculiar facts of that case. In the present case, no such ban exists and none has been either pleaded or pointed out at the time of the hearing, with regard to the user of Yuba Bharati Krirangan, Salt Lake, Kolkata. Therefore, the holding of the Book Fair at the aforesaid venue cannot be said to be in violation of any particular law. In our opinion, the petitioner has filed this writ petition, being naively inspired and misconstruing the Judgments passed by this Court in W.P. No. 72 of 2007 and W.P. No. 1373 (W) of 2008. The Judgments in both the writ petitions above have no bearing on the issue raised in the present writ petition. The petitioner in the present case has not placed on the record any material to show that there would be any danger to the local environment whereas in the earlier cases specific material had been placed with regard to levels of pollution and other inherent dangers to the society. Both the

Judgments had been rendered by taking into account the environmental problems of the locality and the material brought on the record with regard to the levels of pollution, in these two localities. However, a perusal of the present writ petition would show that pleadings are wholly vague and non-specific about any particular injury that may be caused to any particular group or community. Only general allegations have been made by the petitioner that there would be misuse of the public funds in case the Book Fair is permitted to be held by the Sports and Youth Services Department. The petitioner has not cared to do any research or survey of the local conditions prevailing at the venue of the proposed Book Fair. Petition seems to be based primarily on newspaper reports. The petition, therefore, is liable to be rejected at the threshold. We may note here the relevant observations of the Supreme Court in the case of S.P. Anand, Indore v. H.D. Deve Gowda and Ors. reported in : AIR 1997 SC272 :

18. ...It is of utmost importance that those who invoke this Court's jurisdiction seeking a waiver of the locus standi rule must exercise restraint in moving the Court by not plunging in areas wherein they are not well-versed. Such a litigant must not succumb to spasmodic sentiments and behave like a knight-errant roaming at will in pursuit of issues providing publicity.

He must remember that as a person seeking to espouse a public cause, he owes to the public as well as to the Court that he does not rush to Court without undertaking a research, even if he is qualified or competent to raise the issue....

4. We are of the considered opinion that for the reasons stated above, this writ petition cannot be entertained in public interest. Even otherwise, the writ petition is liable to be rejected, in view of the law laid down in a catena of Judgments of the Supreme Court. We may make reference here only to some of the Judgments of the Supreme Court. In the case of Balco Employees' Union (Regd.) v. Union of India and Ors. reported in : (2002)ILLJ550SC , the Supreme Court culled out some of the principles that would govern the practice and procedure with regard to public interest litigation.

77. Public interest litigation, or PIL as it is more commonly known, entered the Indian judicial process in 1970. It will not be incorrect to say that it is primarily the

Judges who have innovated this type of litigation as there was a dire need for it. At that stage, it was intended to vindicate public interest where fundamental and other rights of the people who were poor, ignorant or in socially or economically disadvantageous position and were unable to seek legal redress were required to be espoused. PIL was not meant to be adversarial in nature and was to be a cooperative and collaborative effort of the parties and the Court so as to secure justice for the poor and the weaker sections of the community who were not in a position to protect their own interests. Public interest litigation was intended to mean nothing more than what words themselves said viz. 'litigation in the interest of public.

78. While PIL initially was invoked mostly in cases connected with the relief to the people and the weaker sections of the society and in areas where there was violation of human rights under Article 21, but with the passage of time, petitions have been entertained in other spheres. Prof. S.B. Sathe has summarised the extent of the jurisdiction which has now been exercised in the following words:

PIL may, therefore, be described as satisfying one or more of the following parameters. These are not exclusive but merely descriptive:

-Where the concerns underlying a petition are not individualist but are shared widely by a large number of people (bonded labour, undertrial prisoners, prison inmates).

-Where the effected persons belong to the disadvantaged sections of society (women, children, bonded labour, unorganised labour etc.).

-Where judicial law making is necessary to avoid 'exploitation (inter-country adoption, the education of the children of the prostitutes).

-Where judicial intervention is necessary for the protection of the sanctity of democratic institutions (independence of the judiciary existence of grievances redressal forums).

-Where administrative decisions related to development are harmful to the environment and jeopardize people's right to natural resources such as air or

water.

79. There is, in recent years, a feeling which is not without any foundation that public litigation is now tending to become publicity interest litigation or private interest litigation and has a tendency to counterproductive.

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 re-emphasize the same.

5. The limitation within which the Court must act, and the caution against the abuse of the same have again been succinctly set out by the Supreme Court in the case of *S.P. Gupta v. Union of India* reported in 1981 (supp) SCC 87. Bhagwati, J. in paras 241 has observed as follows:

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 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. Andre Rabie has warned that 'political pressure groups who could not achieve their aims through the administrative process and we might add, through 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....

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 a public would be to foist a relief on the person or specific class or group of persons primarily injured, which they do not want.

6. The same caution is echoed in the case of *Sachidanand Pandey and Anr. v. State of West Bengal and Ors.* reported in : [1987]2SCR223 . In para 61 it is 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 hardships 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.

7. Again, in the case of *Janata Dal v. H.S. Chowdhary and Ors.* reported in : 1993 CriLJ600 , at paras 109 and 110, Pandian, J. reiterated the caution, in the following words:

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.

110. 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. Thought we are second to none in fostering and developing the newly invented concept of PIL and extending out 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, unrepresented 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 the un due delay in service matters, Government or private persons awaiting the disposal of tax cases wherein huge amounts of public revenue or unauthorised collection of tax amounts are locked up, detenus 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 for themselves or as proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffling 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 Court, never moves which piquant situation creates a frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system.

8. These observations are relevant in the facts and circumstance of this case. Apart from the petitioner no member of the sports fraternity has joined the

petitioner in challenging the decision for holding the Book Fair. Merely because the petitioner is an advocate, in our opinion, would not make the writ petition maintainable as a public interest litigation. In fact, an advocate filing a petition in public interest is required to demonstrate much higher standards of caution, care and rectitude, than an ordinary litigant. In the present case, there is no material on the record to enable this Court to entertain the writ petition. The concern shown by the petitioner does not seem to be shared by any other segment of the society.

9. On the basis of the material placed on record in this case we are unable to conclude that any constitutional provision would be violated if the Book Fair is permitted to be held at the venue fixed. In view of the above, we find no merit in the petition. The writ petition is accordingly dismissed.

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