

13.02.09**W.P. 2311 (w) of 2009**

Mr. Kishore Dutta,
Ms. Sunita Shaw.

..... For the Petitioner.

Mr. Sandip Srimani,
Ms. Suchitra Saha,
Ms. Sharmila Basu.

.. For the State.

We have perused the writ petition. The petitioner claims that he is a businessman and is, inter alia, engaged in the business of catering and is also a railway contractor and is also engaged in other business. The petitioner also claims to be a social worker engaged in various social activities. He also claims to be associated with various non-government organizations which are engaged in various social activities. He has filed this writ petition pro bono publico challenging the policy laid down by the Election Commission of India for transfer and posting of police officials during the conduct of elections to the Lok Sabha and Legislative Assembly of the State on the ground that the aforesaid policy is arbitrary, ineffective, contrary to the objectives sought to be achieved. The petitioner also claims that he has no personal interest in the matter and is in no way connected with the transfer and posting of police officials. In fact the petitioner is not connected with the

police administration at all, let alone during the elections to the Assemblies of the State or the Lok Sabha.

At the outset, we requested Mr. Dutta to explain to us some details about the social activities and the social work that the petitioner may have participated in. However, the learned counsel is unable to give any details. Counsel merely states that the petitioner has no interest whatsoever in the police department and is not interested in the outcome of the writ petition. The petitioner is only concerned with the Election Commission to perform its duties in accordance with the constitutional mandate.

We have considered the submissions made by the learned counsel for the petitioner. Repeatedly the law has been laid down by the Supreme Court that it is incumbent on the High Court to satisfy itself with regard to the bonafide of the writ petitioner. It is also necessary for the High Court to ensure that frivolous, vexatious public interest writ petitions are not entertained especially at the instance of interlopers and busy bodies. In this connection we reproduce some of the judgements in which the Supreme Court has shown its concern over the misuse of the public interest litigation. In the case of *Janata Dal v. H.S. Chowdhary*, (1992) 4 SCC 305, at page 348, after tracing the history and development of the Public Interest Litigation in India it was observed :

“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.”

The same view was reiterated in Dattaraj Nathuji Thaware vs. State of Maharashtra,(2005) 1 SCC 590, at page 594 :

“11. It is depressing to note that on account of such trumpery proceedings initiated before the courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of 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, 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 the 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 unauthorised collection of tax amounts are locked up, detenus expecting their release from 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, busybodies, meddling 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 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 courts never moves, which piquant situation creates frustration in the minds of genuine litigants and resultantly they lose faith in the administration of our judicial system.

12. 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 armoury of law for delivering social justice to 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 be publicity-oriented or founded on personal vendetta. As indicated above, court must be careful to see that a body of persons or member of the 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 motives, and try to bargain for a good deal as well as to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

14. 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 a 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 impostors 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.”

In a recent decision of the Supreme Court in the case of Common Cause (A Regd. Society) v. Union of India,(2008) 5 SCC 511, at page 532 it was observed :

“59. Unfortunately, the truth is that PILs are being entertained by many courts as a routine and the result is that the dockets of most of the superior courts are flooded with PILs, most of which are frivolous or for which the judiciary has no remedy. As stated in *Dattaraj Nathuji Thaware case* [(2005) 1 SCC 590] public interest litigation has nowadays largely become “publicity interest litigation”, “private interest litigation”, or “politics interest litigation” or the latest trend “paise income litigation”. Much of PIL is really blackmail.

60. Thus, public interest litigation which was initially created as a useful judicial tool to help the poor and weaker section of society who could not afford to come to courts, has, in course of time, largely developed into an uncontrollable Frankenstein and a nuisance which is threatening to choke the dockets of the superior courts obstructing the hearing of the genuine and regular cases which have been waiting to be taken up for years together.”

Keeping in view the law laid down by the Supreme Court in the judgments referred to hereinabove, we have examined the materials placed on the record by the petitioner in support of the claim that he is a social worker and is also associated with the some other N.G.O.s. We find the writ petition is singularly silent on material particulars, about the social work done by the petitioner, or the N.G.O.s with whom he claims to be associated. Mr. Datta has repeatedly stated before the

Court, that the petitioner has no concern with the police department. Yet he does not want the police department to be excluded from the field of operation of the directions issued or that may be issued by the Election Commission of India. We are unable to appreciate the submissions of Mr. Datta that the police department has no role to play whatsoever in the conduct of the elections. Clearly the police department has an important role to play if the State is to ensure that the law and order situation is maintained to hold free, fair and peaceful elections. Therefore, we do not find any substance in the submissions of Mr. Datta that the notification issued by the Election Commission is ultra vires any provisions of the Constitution of India.

We are not satisfied with the bonafides of the writ petitioner, nor are we satisfied with the locus standi of the writ petitioner. The writ petition is accordingly dismissed.

(SURINDER SINGH NIJJAR, C.J.)

(BISWANATH SOMADDER, J.)