Dr. B. Singh vs Union Of India & Ors on 11 March, 2004

Equivalent citations: AIR 2004 SUPREME COURT 1923, 2004 AIR SCW 1494, 2004 (2) SLT 558, 2004 (3) SCC 363, 2004 (3) SCALE 224, 2004 (3) ACE 135, 2004 ALL CJ 2 1073, (2004) 3 JT 127 (SC), (2004) 16 ALLINDCAS 27 (SC), (2004) ILR (KANT) (2) 1779, (2004) 17 INDLD 235, (2004) 55 ALL LR 153, (2004) 2 ALL WC 1352, (2004) 3 CAL HN 101, (2004) 2 LAB LN 114, (2004) 3 MAD LW 305, (2004) 3 RAJ LW 368, (2004) 2 SCT 494, (2004) 2 SUPREME 387, (2004) 3 SCALE 224, (2004) 101 FACLR 575

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Bench: Doraiswamy Raju, Arijit Pasayat

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           CASE NO.:
Writ Petition (civil)  122 of 2004

PETITIONER:
Dr. B. Singh

RESPONDENT:
Union of India & Ors.

DATE OF JUDGMENT: 11/03/2004

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT

JUDGMENT:
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J U D G M E N T (D. No.305/2004) ARIJIT PASAYAT, J.

This petition filed purportedly under Article 32 of the Constitution of India, 1950 (in short the 'Constitution') shows to what extent the process of law can be abused. It carries the attractive brand name of "public interest litigation", but the least that can be said is that it smacks of everything what a public interest litigation should not be.

The petition is purported to have been filed questioning the propriety of respondent No.3 being considered for appointment as a Judge. Subsequently, an application was filed for permission to withdraw the petition with liberty to file a fresh petition as in the meantime respondent No.3 has been appointed as a Judge.

Before we go into the desirability of even entertaining such a petition, background in which the petition has been filed needs to be noticed.

According to the petitioner, as reflected in the petition, basis of the petition is a copy of the representation purported to have been received from one Ram Sarup which was addressed to the President of India with copies to the Chief Justice of India, Ministry of Law and Justice, Chief Justice of Punjab and Haryana High Court, Governor of Haryana and Bar Council of India wherein allegations were made against respondent No.3. Only on the basis of what is stated therein of which apparently the petitioner himself cannot legitimately claim to have any personal knowledge the petitioner filed a writ petition before the Punjab and Haryana High Court which was dismissed. The petitioner makes a grievance that aforesaid Ram Sarup had received acknowledgement of the representation addressed to the President of India wherein it was also noted that the same had been forwarded to the Secretary to the Government of India, Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) for appropriate action. But no action was taken to look into the allegations. It is not clear from the writ petition as to whether the petitioner had sent any representation to the President and other constitutional functionaries as the enclosures to the writ petition show that aforesaid Ram Sarup had sent representations to the President with copies to the other functionaries. The copy of the representation dated 18.10.2003 shows that it was sent by Ram Sarup. The second representation is dated 13.12.2003 in which reference has been made to a representation purported to be dated 28.11.2003. In the representation dated 13.12.2003 reference is made to the acknowledgement dated 12.11.2003. This creates an impression that the acknowledgment dated 12.11.2003, of the President's Secretariat relates to the representations sent by Ram Sarup. But the copy of purported acknowledgement filed as Annexure P-2 shows as if it was sent by the petitioner. No copy of any representation dated 28.10.2003 as indicated in Annexure P-2 has been filed along with the petition. The petitioner nowhere has stated that he has any personal knowledge of the allegations made against respondent No.3. He does not even aver that he made any effort to find out whether the allegations have any basis. He only refers to the representation of Ram Sarup and some paper cuttings of news items. He has not indicated as to whether he was aware of the authenticity or otherwise of the news items. It is too much to attribute authenticity or credibility to any information or fact merely because, it found publication in a newspaper or journal or Magazine or any other form of communication, as though it is gospel truth. It needs no reiteration that newspaper reports per se do not constitute legally acceptable evidence. Strangely, in the affidavit accompanying the writ petition he has stated as follows:

> "That I have read over the contents of accompanying writ petition page No. 1 to 13 para, Para No. 1 to 18, synopsis and list of dates, page A to C and I say that the same are true and correct on knowledge and based on the record of the case".

The affidavit shows that the contents were true and correct to his knowledge and based on records. Strangely, it has not been indicated as to what is the source of his knowledge and are based on what records. Even the copy of the order passed by the Punjab and Haryana High Court where he filed writ application on allegedly identical issues, as indicated in the petition, has not been annexed. The casual and cavalier fashion it appears to have been handled and of late attempted to be made ipse dixit, in a laconic and lackadaisical manner compels to draw the only inference that the petitioner is a busy body bent upon self publicity sans any sense of responsibility unmindful of the adverse impact, at times it may go to create at the expense of decency and dignity of constitutional offices and functionaries and there is no element or even trace of public interest involved in the petition.

When there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes or vendatta to bring to terms a person, not of ones liking, or gain publicity or a facade for blackmail, said petition has to be thrown out. Before we grapple with the issues involved in the present case, we feel it necessary to consider the issue regarding the "public interest" aspect. Public Interest Litigation which has now come to occupy an important field in the administration of law should not be "publicity interest litigation" or "private interest litigation" or "politics interest litigation" or the latest trend "paise income litigation". If not properly and strictly regulated at least in certain vital areas or spheres and abuse averted it becomes also a tool in unscrupulous hands to release vendetta and wreck vengeance, as well to malign not only an incumbent to be in office but demoralise and deter reasonable or sensible and prudent people even agreeing to accept highly sensitive and responsible offices for fear of being brought into disrepute with baseless allegations. There must be real and genuine public interest involved in the litigation and concrete or credible basis for maintaining a cause before court and not merely an adventure of knight errant borne out of wishful thinking. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. The credibility of such claims or litigations should be adjudged on the creditworthiness of the materials, averred and not even on the credentials claimed of the person moving the courts in such cases. A person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the Court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. These aspects were highlighted by this Court in Janata Dal v. H.S. Chowdhary and Ors. (1992 (4) SCC 305) and Kazi Lhendup Dorji vs. Central Bureau of Investigation, (1994 Supp (2) SCC 116). A writ petitioner who comes to the Court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective. See Ramjas Foundation vs. Union of India, (AIR 1993 SC 852) and K.R. Srinivas vs. R.M. Premchand, (1994 (6) SCC 620).

It is necessary to take note of the meaning of expression 'public interest litigation'. In Strouds Judicial Dictionary, Volume 4 (IV Edition), 'Public Interest' is defined thus:

> "Public Interest (1) a matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love 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."

In Black's Law Dictionary (Sixth Edition), "public interest" is defined as follows :

> "Public Interest something in which the public, or some interest by which their legal rights or liabilities are affected. It does not mean anything the particular localities, which may be affected by the matters in question. Interest shared by national government...."

In Janata Dal's case (supra) this Court considered the scope of public interest litigation. In para 53 of the said judgment, after considering what is public interest, has laid down as follows :

> "The expression 'litigation' means a legal action including all proceedings therein initiated in a Court of law for the enforcement of right or seeking a remedy. Therefore, lexically the expression "PIL"

means the legal action initiated in a Court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected."

In para 62 of the said judgment, it was pointed out as follows:

> "Be that as it may, it is needless to emphasis that the requirement of locus standi of a party to a litigation is mandatory, because the legal capacity of the party to any litigation whether in private or public action in relation to any specific remedy sought for has to be primarily ascertained at the threshold."

In para 98 of the said judgment, it has further been pointed out as follows:

> "While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly developed doctrine of PIL, 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 busy body 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."

In subsequent paras of the said judgment, it was observed as follows:

> "It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have as 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".

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 the 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 grievance go unnoticed, un-represented 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 substantial rights 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 undue delay in service matters - government or private, persons awaiting the disposal of tax cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenu 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 busy bodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no real 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 muffing their faces by wearing the mask of public interest litigation and get into the Courts by filing vexatious and frivolous petitions of luxury litigants who have nothing to loose but trying to gain for nothing 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 frustration in the minds of the genuine litigants.

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 armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations by masked phantoms who moniter 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 to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

The Council for Public Interest Law set up by the Ford Foundation in USA defined the "public interest litigation"

> in its report of Public Interest Law, USA, 1976 as follows:
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> "Public Interest Law is the name that has recently been given to efforts provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others."

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 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 imposters and busy bodies 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.

Courts must do justice by promotion of good faith, and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. (See State of Maharashtra vs. Prabhu, (1994 (2) SCC 481), and Andhra Pradesh State Financial Corporation vs. M/s GAR Re-Rolling Mills and Anr., (AIR 1994 SC 2151). No litigant has a right to unlimited drought on the Court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. (See Dr. B.K. Subbarao vs. Mr. K. Parasaran, (1996) 7 JT 265). Today people rush to Courts to file cases in profusion under this attractive name of public interest. Self styled saviours who have no face or ground in the midst of public at large, of late, try to use such litigations to keep themselves busy and their names in circulation, despite having really become defunct in actual public life and try to smear and smirch the solemnity of court proceedings. They must really inspire confidence in Courts and among the public, failing which such litigation should be axed with heavy hand and dire consequences.

As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that Courts are flooded with large number of so called public interest litigations, whereas only a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in large number of cases, yet unmindful of the real intentions and objectives, Courts at times are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in Dr. Duryodhan Sahu and Ors. v. Jitendra Kumar Mishra and Ors. (AIR 1999 SC 114), this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the Courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. This tendency is being slowly permitted to percolate for setting in motion criminal law jurisdiction, often unjustifiably just for gaining publicity and giving adverse publicity to their opponents. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he

found copies of the official documents. Apart from the sinister manner, if any, of getting such copters, the real brain or force behind such cases would get exposed to find out whether it was a bona fide venture. Whenever such frivolous pleas are taken to explain possession, the Court should do well not only to dismiss the petitions but also to impose exemplary costs, as it prima facie gives impression about oblique motives involved, and in most cases show proxy litigation. Where the petitioner has not even a remote link with the issues involved, it becomes imperative for the Court to lift the veil and uncover the real purpose of the petition and the real person behind it. It would be desirable for the Courts to filter out the frivolous petitions and dismiss them with costs as afore-stated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts.

In S.P. Gupta v. Union of India and Anr. (1981 Supp SCC 87) it was emphatically pointed out that the relaxation of the rule of locus standi in the field of PIL does not give any right to a busybody or meddlesome interloper to approach the Court under the guise of a public interest litigant. The following note of caution was given: (SCC p.219, para 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."

In State of H.P. vs. A Parent of a Student of Medical College, Simla and Ors. (1985 (3) SCC 169), it has been said that public interest litigation is a weapon which has to be used with great care and circumspection.

Khalid, J. in his separate supplementing judgment in Sachidanand Pandey vs. State of W.B., (1987 (2) SCC 295,

331) said:

> "Today public spirited litigants rush to courts to file cases in profusion under this attractive name. They must inspire confidence in courts and among the public. They must be above suspicion. (SCC p. 331, para 46) * * * Public interest litigation has now come to stay. But one is led to think that it poses a threat to courts and public alike. Such cases are now filed without any rhyme or reason. It is, therefore, necessary to lay down clear guidelines and to outline the correct parameters for entertainment of such petitions. If courts do not restrict the free flow of such cases in the name of public interest litigations, the traditional litigation will suffer and the courts of law, instead of dispensing justice, will have to take upon themselves administrative and executive functions. (SCC p.334, para
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> 59) * * * 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."

(SCC p.335, para 61) These aspects have been highlighted in Ashok Kumar Pandey v. The State of West Bengal (2003 (8) Supreme 299) Procedure for appointment of a Judge is provided in Article 217 of the Constitution. The process is an elaborate one and involves the views of the collegium of the Court. Where a particular person is to be appointed as a Judge, the modalities and procedures to be adopted have been elaborately dealt with in Special Reference No.1 of 1998, Re: (1998 (7) SCC 739). The scope of judicial review has been specifically delienated, limiting it to want of consultation with the named constitutional functionaries or lack or any condition of eligibility and not on any other ground including that of bias which is in any case is excluded by the element of plurality in the process of decision-making. The view in Supreme Court Advocates-on- Record Association and Ors. v. Union of India 1993 (4) SCC 441 (popularly known as Second Judges' case) was reiterated. It would be proper to take note of very significant observations made in the Second Judges' case about the growing tendency of needless intrusion by strangers and busybodies in the functioning of the judiciary under the garb of public interest litigation, in spite of the caution in S.P. Gupta's case (supra). The note of caution has yielded no fruitful result and on the contrary these busybodies continue to make reckless allegations and vitriolic statements against Judges and persons whose names are under consideration for judgeship. Therefore, it has become imperative to take stern actions against these persons. It is not the ipse dixit of any individual to say as to whether the recommended person is fit for appointment, by making wide allegations which has become common these days and have resulted in delaying appointment of Judges, though large number of vacancies exist in different High Courts. All possible care and caution is exercised before appointment of a Judge is made. It is true that no system is infallible, but at the same time the sinister design of people intended to thwart prospects of a person likely to be appointed as a Judge has to be nipped at the bud. The petitioner has not shown any material to show that he is really interested in the welfare of the judicial system or the institution of the judiciary. As indicated above, he appears to be a busy person seeking publicity and a person who has no genuine concern for the institution, if such type of petitions are permitted to be entertained it will cause immense damage to the system itself. High sounding words used in the petition about the desirability of a transparent judicial system cannot in our view turn a mis-conceived petition filed with oblique motives to be treated as a public interest litigation. This petition deserves to be dismissed with exemplary costs and we direct so. The petition though deserves to be dismissed with costs of Rs.50,000/- hoping that the petitioner would mend his ways and would not hazard such vexatious litigations in future dismiss the same with costs of Rs.10,000/- which the petitioner shall deposit in the Registry of this Court within 6 weeks from today. If deposit is made it shall be remitted to the Supreme Court Legal Services Authority. In case the cost is not deposited within the time stipulated, the Registry shall forward this order to the Punjab and Haryana High Court and the High Court shall have it recovered by coercive means of recovery and remit the same to this Court, which on receipt shall be paid to the Supreme Court Legal Services Authority.