

Kunga Nima Lepcha & Ors vs State Of Sikkim & Ors on 25 March, 2010

Equivalent citations: AIR 2010 SUPREME COURT 1671, 2010 (4) SCC 513, 2010 AIR SCW 2245, (2010) 1 WLC(SC)CVL 564, (2010) 1 CRILR(RAJ) 335, (2010) 70 ALLCRIC 857, (2010) 3 ALLMR 439 (SC), (2010) 80 ALL LR 741, (2010) 4 CAL HN 81, (2010) 5 BOM CR 357, (2010) 46 OCR 94, (2010) 2 ICC 834, (2010) 2 ALLCRILR 677, (2010) 3 GAU LT 17, 2010 CRILR(SC&MP) 335, (2010) 89 ALLINDCAS 152 (SC), 2010 (2) SCC(CRI) 878, 2010 (3) SCALE 309, 2010 CRILR(SC MAH GUJ) 335, (2010) 2 RECCRIR 531, (2010) 3 SCALE 309

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Bench: J. M. Panchal, P. Sathasivam, K.G. Balakrishnan

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) No. (s) 353 of 2006

KUNGA NIMA LEPCHA & ORS.

... PETITIONERS

VERSUS

STATE OF SIKKIM & ORS.

... RESPONDENTS

JUDGMENT

K. G. BALAKRISHNAN, CJI

1. The present writ petition was instituted in this Court by way of public interest litigation under Article 32 of the Constitution of India. The petitioners have levelled some allegations against the incumbent Chief Minister of the State of Sikkim who was impleaded as Respondent No.2 herein. The crux of these allegations is that he has misused his public office to amass assets disproportionate to his known sources of income. The petitioners have also alleged that he has

misappropriated a large volume of public money at the cost of the Government of India and the Government of Sikkim. The relief sought by the petitioners is the issuance of a writ of mandamus directing the Central Bureau of Investigation (CBI) to investigate the allegations that have been levelled against him.

2. It may be recalled that the State of Sikkim had become a full fledged state of the Union of India, following the enactment of the Thirty-sixth Amendment to the Constitution which was given effect in 1975. The said amendment had inserted Article 371F into the constitutional text which lays down special provisions with respect to the governance of the State of Sikkim. We must also take note of the fact that even though the Income Tax Act, 1961 had been extended to the State of Sikkim in 1989, it has not been enforced till date on account of the constitutionally mandated special treatment. The non- enforcement of the Income Tax Act is a relevant consideration since it entails that the income details of individuals who belong to and reside in Sikkim are not recorded by the Income Tax Department. Furthermore, the finances of the government of Sikkim are enhanced by the various developmental and welfare schemes of Government of India. Respondent No. 2 is the founder President of the Sikkim Democratic Front and he has been serving as the Chief Minister of the State of Sikkim since 12th December, 1994. Under his leadership, the Sikkim Democratic Front has been successful in the periodic elections held to constitute the State Legislative Assembly.

3. However, the petitioners have levelled some serious allegations of wrongdoing on part of the second respondent. In Annexure P-1 of the writ petition submitted before this Court, a list of his family members has been provided. This list refers to 21 members which includes 2 wives, 4 sons, 1 daughter, 4 brothers, 6 sisters-in-law, 1 father-in- law, and 3 brothers-in- law. It has been pointed out that in order to contest the elections to the State Legislative Assembly from the 13- Damthang Constituency in the year 2004, he had declared his family's assets taken together to be Rs. 4,76,54,238/-. This declaration was made as per the requirements of the Representation of People Act, 1951. However, the petitioners have alleged that the total assets actually amount to more than Rs. 25 crores.

4. In Paragraph 29 of the writ petition, the petitioners have incorporated a detailed description of the movable and immovable assets that allegedly belong to Respondent No. 2 and his relatives. Furthermore, the petitioners have also alleged that Respondent No. 2 has acquired several immovable properties either in his own name or in the name of his relatives or in the name of his nominees by way of misappropriating funds from the public exchequer. In Annexure P-20, the petitioners have alleged that the Government of Sikkim acting through the Sikkim Power Development Corporation has misappropriated an amount of Rs. 15.38 crores from the public exchequer. The petitioners have supported these allegations by submitting that the relevant information was procured in response to applications filed under the Right to Information Act, 2005. It will also be useful to reproduce the prayer sought by the petitioners in the following words:

"(a) issuance of an appropriate writ in the nature of Mandamus commanding the Director, Central Bureau of Investigation to investigate the awarding of government contracts and/or work orders by the Respondent No. 1 State of Sikkim during the tenure of the Respondent No.2 as the Chief Minister of the State of Sikkim viz a viz

amassing of huge assets and/or wealth by the Respondent No. 2 and his relatives with a direction upon it to submit its report before this Hon'ble Court within a time frame fixed by this Hon'ble Court;

(b) issuance of an appropriate writ in the nature of mandamus commanding the Director, Central Bureau of Investigation to investigate the matter against the Respondent No. 2, his relatives and other guilty officials and take appropriate legal action by way of registration of FIR under the general provisions of law and the provisions of Prevention of Corruption Act, 1988;

(c) order for rule nisi in terms of the prayers above;

(d) pass such further order(s) and/or direction(s) as this Hon'ble Court may deem fit and proper."

5. In the course of the proceedings before this Court, Sh. Vinod Bobde, Sr. Adv. argued on behalf of the petitioners. Thereafter, Sh. Ram Jethmalani, Sr. Adv. made oral submissions on behalf of the respondents, followed by Sh. K.K. Venugopal. Sr. Adv. Thereafter, Sh. Vinod Bobde, Sr. Adv. made his submissions in rejoinder.

6. Before addressing the substance of the petitioners' submissions, it must be mentioned that there are four petitioners in this case who are serving as office-bearers of a political party in Sikkim. Petitioner No. 3 has affirmed through an affidavit dated 31st August, 2007, that they were advised to file a writ petition before this court by former Chief Minister of the State of Sikkim and currently serving as President of a political party. In fact, Petitioner No. 3 has sworn on affidavit that he had joined these proceedings as a petitioner at the instance of him. He has also cast aspersions on the motives of Sh. Kunga Nima Lepcha (Petitioner No. 1) for filing the present writ petition. In view of this position, Petitioner No. 3 had sought permission to withdraw from the proceedings.

7. The fact that this petition was instituted at the initiative of four individuals belonging to a political party raises the apprehension that they were motivated by a sense of political rivalry rather than a public-spirited concern about the misuse of office by the incumbent Chief Minister. We must of course emphasise that the writ jurisdiction exercised by this Court cannot be turned into an instrument of such partisan considerations. However, even if we were to accept the locus standi of the petitioners keeping in mind that allegations of corruption on part of the incumbent Chief Minister do touch on public interest, this Court is not the appropriate forum for seeking the initiation of investigation.

8. It is of course true that this Court has copious powers under Article 32 of the Constitution for the purpose of enforcing the rights enshrined in Part III of the Constitution. Over the years, this Court has creatively expanded its writ jurisdiction to provide redress against the infringement of fundamental rights and concurrently relied on Article 142 to do complete justice in the matters before it. As explained by J.S. Verma, C.J., in *Vineet Narain v. Union of India* (1998) 1 SCC 226 (Para. 49):

"49. There are ample powers conferred by Article 32 read with Article 142 to make orders which have the effect of law by virtue of Article 141 and there is mandate to all authorities to act in aid of the orders of this Court as provided in Article 144 of the Constitution. In a catena of decisions of this Court, this power has been recognized and exercised, if need be, by issuing necessary directions to fill the vacuum till such time the legislature steps in to cover the gap or the executive discharges its role..."

9. However, the remedies evolved by way of writ jurisdiction are of an extraordinary nature. They cannot be granted as a matter of due course to provide redressal in situations where statutory remedies are available. It is quite evident that the onus is on the petitioners to demonstrate a specific violation of any of the fundamental rights in order to seek relief under writ jurisdiction. In the present petition, the petitioners have made a rather vague argument that the alleged acts of corruption on part of Shri Pawan Chamling amount to an infringement of Article 14 of the Constitution of India. We do not find any merit in this assertion because the guarantee of 'equal protection before the law' or 'equality before the law' is violated if there is an unreasonable discrimination between two or more individuals or between two or more classes of persons. Clearly the alleged acts of misappropriation from the public exchequer cannot be automatically equated with a violation of the guarantee of 'equal protection before the law'.

10. Furthermore, we must emphasise the fact that the alleged acts can easily come within the ambit of statutory offences such as those of 'possession of assets disproportionate to known sources of income' as well as 'criminal misconduct' under the Prevention of Corruption Act, 1988. The onus of launching an investigation into such matters is clearly on the investigating agencies such as the State Police, Central Bureau of Investigation (CBI) or the Central Vigilance Commission (CVC) among others. It is not proper for this court to give directions for initiating such an investigation under its writ jurisdiction. While it is true that in the past, the Supreme Court of India as well as the various High Courts have indeed granted remedies relating to investigations in criminal cases, we must make a careful note of the petitioners' prayer in the present case. In the past, writ jurisdiction has been used to monitor the progress of ongoing investigations or to transfer ongoing investigations from one investigating agency to another. Such directions have been given when a specific violation of fundamental rights is shown, which could be the consequence of apathy or partiality on part of investigating agencies among other reasons. In some cases, judicial intervention by way of writ jurisdiction is warranted on account of obstructions to the investigation process such as material threats to witnesses, the destruction of evidence or undue pressure from powerful interests. In all of these circumstances, the writ court can only play a corrective role to ensure that the integrity of the investigation is not compromised. However, it is not viable for a writ court to order the initiation of an investigation. That function clearly lies in the domain of the executive and it is upto the investigating agencies themselves to decide whether the material produced before them provides a sufficient basis to launch an investigation. It must also be borne in mind that there are provisions in the Code of Criminal Procedure which empower the courts of first instance to exercise a certain degree of control over ongoing investigations. The scope for intervention by the trial court is hence controlled by statutory provisions and it is not advisable for writ courts to interfere with criminal investigations in the absence of specific standards for the same.

11. Hence it is our conclusion that the petitioners' prayer cannot be granted. This court cannot sit in judgment over whether investigations should be launched against politicians for alleged acts of corruption. The Supreme Court of India functions as a Constitutional Court as well as the highest appellate court in the country. If the Supreme Court gives direction for prosecution, it would cause serious prejudice to the accused, as the direction of this Court may have far reaching persuasive effect on the Court which may ultimately try the accused. It is always open to the petitioners to approach the investigative agencies directly with the incriminating materials and it is for the investigative agencies to decide on the further course of action. While we can appreciate the general claim that the efforts to uncover the alleged acts of corruption may be obstructed by entrenched interests, in this particular case the petitioners would be well advised to rely on the statutory remedies. It is only on the exhaustion of ordinary remedies that perhaps a proceeding can be brought before a writ court and in any case the High Court of Sikkim would be a far more appropriate forum for examining the allegations made in the present petition.

12. Hence, the writ petition is dismissed, however with no order as to costs.

.....CJI [K.G. BALAKRISHNAN]

.....J. [P. SATHASIVAM]J. [J. M. PANCHAL] New Delhi March 25,
2010