

Holicow Pictures Pvt.Ltd vs Prem Chandra Mishra & Ors on 6 December, 2007

Equivalent citations: AIR 2008 SUPREME COURT 913, 2008 AIR SCW 343, (2008) 2 ALLMR 58 (SC), (2008) 1 CTC 711 (SC), (2008) 62 ALLINDCAS 52 (SC), 2007 (14) SCALE 10, 2007 (14) SCC 281, 2008 (1) CTC 711, 2008 (2) ALL MR 58 NOC, (2007) 14 SCALE 10, (2008) 1 MAD LJ 1075, (2008) 2 MAD LW 847, (2008) 70 ALL LR 828

Author: Arijit Pasayat

Bench: Arijit Pasayat, P . Sathasivam

CASE NO.:

Appeal (civil) 5671 of 2007

PETITIONER:

Holicow Pictures Pvt.Ltd.

RESPONDENT:

Prem Chandra Mishra & Ors.

DATE OF JUDGMENT: 06/12/2007

BENCH:

DR. ARIJIT PASAYAT & P . SATHASIVAM

JUDGMENT:

JUDGMENT DR. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of the Patna High Court disposing the writ petition filed by the respondent No.1 styled as a "Public Interest Litigation". The order gave certain directions and nullifying certain allotments of land made in favour of respondent No.5. In the writ petition action of the State Government of Bihar in granting appellant through its Director Prakash Jha land pieces in the Industrial areas in Patna, Hajipur, Muzaffarpur, Sitamarhi and Buxar. The writ petitioner alleged that the said Prakash Jha, Director of present appellant who was respondent No.5 in the writ petition was given land in return of services rendered by him to help the present Chief Minister to win last assembly elections. It was alleged that the action of the Government amounted to doling out valuable State property as largess at throw away prices for political considerations.

3. The writ petition was filed, and was claimed to be, in public interest. The respondent described himself as the Chief Spokesperson of the Indian National Congress, a recognized political party. His party contested the previous election in alliance with the party that was in power at that time. The alliance got worsted in the election and Congress party was returned as a poor fourth. Respondent no.5 is a private limited company; it is represented through a person who is well-known as a film-maker but who also takes part in electoral politics. In the supplementary affidavit filed by the petitioner, it was stated that Prakash Jha had fought the 2004 Lok Sabha Election from the Bettiah Lok Sabha Constituency. It is further stated that in the last assembly election held in October-November, 2005 though not a candidate himself, he addressed public meetings jointly with the present Chief Minister in various parts of the State. As both the petitioner and said Prakash Jha are political persons, it is not surprising that the pleadings are heavy with political invectives.

4. In the writ petition, it was stated that the Bihar Industrial Area Development Authority (hereinafter referred to as "the Authority") has given large areas of land at various places to respondent no.5 at throwaway prices. It was further stated that allotments of land were made to respondent no.5 without issuing any notice, inviting competitive bids, and the land areas were granted to respondent no.5 at very cheap rates without following the established norms and procedure. According to him the market value of the said land plots was much higher. For instance, in Patliputra Industrial Area, Patna one acre land was given to respondent no.5 for Rs.14,65,000.00. This piece of land should have fetched the State about rupees five crores if allotments were to be made on the basis of competitive bidding. It was also stated that in a blatant show of favour, respondent no.5 was also given the Authority's Office building along with the land in Patliputra Industrial Area. The favour was crowned by putting a very low value for the building. It was also alleged that the action of the State Government/Authority in granting to respondent no.5 land at different places was an act of malafide and called for institution of criminal cases against the concerned people and an investigation by the Central Bureau of Investigation.

5. The writ petition, in brief, made three allegations. (i) land plots were given to respondent no.5 at different places in the State without issuing any notice, inviting bids and at value far below the market price of those land plots, (ii) the allotment -was made without following any norms or procedure and (iii) the action of the State Government caused heavy loss to the State; the action was based on political considerations and was, therefore, malafide.

6. The respondents in the writ petition questioned bonafides of the writ petitioner. They took the stand that there was nothing illegal and the entire action was bonafide in the greater interests of the State. It was pointed out that the malafides of the writ petitioner are clear from the fact that the writ petitioner did not question legality of the action of the then State Government who had in the year 1996 allotted the land in the Patliputra Industrial areas to one M/s Dynax Digital Studio (Ind) Pvt. Ltd. for consideration of Rs.5.5 lakhs. The allotment made was subsequently cancelled and the consideration for allotment was fixed by raising the land value at the rate of 10% only as provided in Govt. letter dated 17.7.1982. It was also submitted that the petition was an abuse of Public Interest Litigation and deserves to be rejected outright.

7. After referring to the various stands, ultimately, the High Court came to observe that there was more than what met the eye and the allotment of land plots to respondent no.5 was done in a thoroughly irregular manner and the allotments are completely untenable. So far as the charge of malafides is concerned the State's submission was accepted by giving "benefit of doubt". It was, however, observed that the authorities were in a hurry to go for private investment and that might have led to non-observance to some of the official norms was held to be completely unacceptable. The writ petition was disposed of with following observations and directions.

"In the facts and circumstances discussed above, I reject the allegation of malafide. But at the same time, I am unable to accept the submission that the Court should not interfere in the matter because the writ petition may not qualify as Public Interest Litigation. In view of the facts coming to its notice, the only proper course for the Court is to intervene and to set things right. I therefore, feel constrained to interfere with the allotments made by the Authority in favour of respondent No.5. All the allotments of lands made in favour of respondent No. 5 are accordingly quashed. The Authority is directed to resume possession of the lands. It will be open to respondent no. 5 to make fresh applications with proper Project Reports and supporting documents for allotment of lands to it at different centres. In case such applications made, the authority shall consider them in accordance with law and take a decision on those applications within three months of the date of their receipt in its office. It will be open to respondent No.5 either to get back all its money deposited with the Authority or in case it makes fresh applications to wait till the final decision on those applications is taken by the Authority.

This writ petition is disposed of with the aforesaid observations and directions. There will be no order as to costs."

8. In support of the appeal, learned counsel for the appellant submitted that there was complete violation of principles of natural justice in the instance case. The High Court's observations were contrary to the materials on record. The High Court appears to have based its conclusions on a reading of the files without any opportunity to either the authorities or the State Government and in any event not to the present appellant to explain the fact situation. If the High Court had any doubt about any aspect which according to it was relevant, opportunity in that regard should have been given. Unfortunately that has not been done. It is pointed out that the High Court has rightly rejected the stand of the writ petitioner about malafides. That was sufficient to throw out the writ petition at the threshold. Instead of that the High Court referred to the records and came to conclusions finding alleged discrepancies without grant of opportunity. The conclusions are contrary to the materials available and in any event the High Court ought not to have relied solely on the counter affidavits filed which were in fact replies to the averments made in the writ petition. Most of the conclusions of the High Court related to aspects which were not even pleaded in the writ petition. That being so, there was no scope for the respondents in the writ petition to throw any light on aspects which ultimately were taken note of by the High Court. It is pointed out that the writ petitioner himself accepted that he was a functionary of a political party. The petition is nothing but political vendata unleashed.

9. Learned counsel for the State of Bihar and the Authority supported the stand taken by the appellant. On the contrary the respondent No.1-writ petitioner submitted that merely because the High Court has given the "benefit of doubt" to the State Government, it could not have closed eyes to the apparent illegalities which a bare perusal of the records revealed. The State and the Authorities, it is submitted, filed affidavits taking contrary stands. Stand which was stated in one affidavit was subsequently departed from.

10. When there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, the said petition is to be thrown out. Before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding 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 regulated and abuse averted, it becomes also a tool in unscrupulous hands to release vendetta and wreck vengeance, as well. There must be real and genuine public interest involved in the litigation 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. 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 *The Janta Dal v. H.S. Chowdhary*, [1992] 4 SCC 305, and *Kazi Lhendup Dorji v. 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 v. Union of India*, AIR (1993) SC 852 and *K.R. Srinivas v. R.M. Premchand*, [1994] 6 SCC 620].

11. It is necessary to take note of the meaning of expression 'public interest litigation'. In Stroud's 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."

12. 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...."

13. In Janata Dal case (supra) this Court considered the scope of public interest litigation. In para 52 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."

14. In paras 60, 61 and 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."

15. In para 96 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."

16. 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".

17. It is depressing to note that on account of such trumpety proceedings initiated before the Courts, innumerable days are wasted, the time which otherwise could have been spent for 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 grievances 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 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 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 busybodies, meddlesome 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 muffing 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 the genuine litigants and resultantly they loose faith in the administration of our judicial system.

18. 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 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 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 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.

19. 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:

"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."

20. 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 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.

21. 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 v. Prabhu*, [1994] 2 SCC 481 and *Andhra Pradesh State Financial Corporation v. M/s GAR Re-Rolling Mills and Anr.*, AIR (1994) SC 2151,. No litigant has a right to unlimited draught 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 v. Mr. K. Parasaran*, (1996) 7 JT 265). Today people rush to Courts to file cases in profusion under this attractive name of public interest. They must inspire confidence in Courts and among the public.

22. 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 where even 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 are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. It is also noticed that petitions are based on newspaper reports without any attempt to verify their authenticity. As observed by this Court in several cases newspaper reports do not constitute evidence. A petition based on unconfirmed news reports, without verifying their authenticity should not normally be entertained. As noted above, such petitions do not provide any basis for verifying the correctness of statements made and information given in the petition. 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.

23. In *S.P. Gupta v. Union of India*, [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. He has also left the following note of caution: (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."

24. In *State of H.P. v. 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.

25. These aspects have been highlighted in *Ashok Kumar Pandey v. State of West Bengal*, [2004] 3 SCC 349 and *Dr. B. Singh v. Union of India & Ors.* [2004] 3 SCC 363 and *Dattaraj Nathuji Thaware v. State of Maharashtra and Ors.* [2005] 1 SCC 590.

26. It is true that in certain cases even though the Court comes to the conclusion that the writ petition was not in a public interest, yet if it finds that there is scope for dealing with the matter further in greater public interest, it can be done. This can be done by keeping the writ petitioner out of picture and appointing an amicus curiae. This can only be done in exceptional cases and not in a routine manner.

27. It is true as contented by learned counsel for the appellant that the High Court's conclusions were drawn after going through the files. It is apparent from records that the High Court did not ask the parties to clarify any doubt it entertained as regards certain crucial aspects. These aspects assume considerable importance because they have formed the foundation of the High Court's conclusions about irregularity/illegality in allotment.

28. In the circumstances we set aside the order of the High Court and remit the matter to it for fresh consideration. Needless to say the parties shall be permitted to place material in support of their respective stand, in addition to those which are already on record and the High Court shall thereafter take a decision in the matter within four weeks. Further affidavits shall be filed with all relevant details/documents by the parties. We make it clear that we have not expressed any opinion on the merits of the case.

29. The appeal is allowed to the aforesaid extent.