Ashok Kumar Pandey vs The State Of West Bengal on 18 November, 2003

Equivalent citations: AIR 2004 SUPREME COURT 280, 2004 (3) SCC 349, 2003 AIR SCW 6105, 2011 (1) SCC (CRI) 865, 2004 ALL CJ 2 1066, 2004 CALCRILR 1, (2004) 1 JCR 116 (SC), (2003) 9 JT 140 (SC), 2003 (7) SLT 343, 2003 (9) SCALE 741, 2003 (4) LRI 868, (2003) 3 BLJ 327, (2004) SC CR R 464, 2004 CHANDLR(CIV&CRI) 469, (2004) 1 PAT LJR 88, (2003) 3 CHANDCRIC 405, (2003) 4 CRIMES 532, (2004) 1 EASTCRIC 186, (2004) 1 MADLW(CRI) 369, (2003) 4 RECCRIR 940, (2003) 4 CURCRIR 465, (2003) 8 SUPREME 299, (2003) 9 SCALE 741, (2004) 1 JLJR 1, (2004) 13 INDLD 679, (2004) 48 ALLCRIC 86, (2004) 1 CAL LJ 28, (2004) 1 ALLCRILR 279

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Bench: Doraiswamy Raju, Arijit Pasayat

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           CASE NO.:
Writ Petition (crl.)  199 of 2003

PETITIONER:
Ashok Kumar Pandey

RESPONDENT:
The State of West Bengal

DATE OF JUDGMENT: 18/11/2003

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT.

JUDGMENT:
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J U D G M E N T ARIJIT PASAYAT, J This petition under Article 32 of the Constitution of India, 1950 (in short 'the Constitution') has been filed purportedly in public interest. The prayer in the writ petition is to the effect that the death sentence imposed on one Dhananjay Chatterjee @ Dhana (hereinafter referred to as 'the accused') by the Sessions Court, Alipur, West Bengal, affirmed by the Calcutta High Court and this Court, needs to be converted to a life sentence because there has been no execution of the death sentence for a long time. Reliance was placed on a Constitution Bench decision of this Court in Smt. Triveniben vs. State of Gujarat, (1989 (1) SCC 678).

According to the petitioner, he saw a news item in a TV channel wherein it was shown that the authorities were unaware about the non-execution of the death sentence and, therefore, condemned prisoner, the accused has suffered a great degree of mental torture and that itself is a ground for

conversion of his death sentence to a life sentence on the basis of ratio in Triveniben's case (supra). It needs to be noted here that prayer for conversion of death sentence to life sentence has already been turned down by the Governor of West Bengal and the President of India in February 1994 and June 1994 respectively as stated in the petition. When the matter was placed for admission, we asked the petitioner who appeared in-person as to what was his locus standi and how a petition under Article 32 is maintainable on such nature of information by which he claims to have come to know of it. His answer was that as a public spirited citizen of the country, he has a locus to present the petition and when the matter involved life and liberty of a citizen, this Court should not stand on technicalities and should give effect to the ratio in Triveniben's case (supra). There has been violation of Article 21 of the Constitution and the prolonged delay in execution of sentence is violative of Article 21, so far as the accused is concerned.

Reliance was also placed on few decisions, for example, Sunil Batra (II) vs. Delhi Administration, (1980 (3) SCC 488); S.P. Gupta vs. Union of India, (1981 (Supp.) SCC 87); Daya Singh vs. Union of India, (1991 (3) SCC 61) and Janata Dal vs. H.S. Choudhary, (1992 (4) SCC 305) to substantiate the plea that the petitioner had locus standi to present the petition in public interest and this was a genuine public interest litigation.

When there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, 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 or poke ones into for a probe. 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 case (supra) 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 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."

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."

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."

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 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 busy bodies, 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 court 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.

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 consideration. The Court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. 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:

> "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. They must inspire confidence in Courts and among the public.

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. 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. 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. 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. 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.

Coming to the facts of the case, it has not been shown as to how and in what manner the accused, condemned prisoner is handicapped in not seeking relief if any as available in law. The matter pertains to something to happen or not at Kolkatta and what was the truth about the news or cause for the delay, even if it be is not known or ascertained or even attempted to be ascertained by the petitioner before approaching this Court. To a pointed query, the petitioner submitted that the petitioner "may not be aware"

> of his rights, that except the news he heard he could not say any further and "the respondent-State may come and clarify the position. This petition cannot be entertained on such speculative foundations and premises and to make a roving enquiry. May be at times even on certain unconfirmed news but depending upon the gravity or heinous nature of the crime alleged to be perpetrated which would prove to be obnoxious to the avowed public policy, morals and greater societal interests involved, Courts have ventured to intervene but we are not satisfied that this could be one such case, on the facts disclosed. It is reliably learnt that a petition with almost identical prayers was filed before the Calcutta High Court by relatives of the accused and the same has been recently dismissed by the High Court.
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> In Gupta's case (supra) 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
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> 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 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) Sabyasachi Mukharji, J. (as he then was) speaking for the Bench in Ramsharan Autyanuprasi vs. Union of India, (1989 Supp (1) SCC 251), was in full agreement with the view expressed by Khalid, J. in Sachidanand Pandey's case (supra) and added that 'public interest litigation' is an instrument of the administration of justice to be used properly in proper cases.

See also separate judgment by Pathak, J. (as he then was) in Bandhua Mukti Morcha vs. Union of India, (1984 (3) SCC 161).

Sarkaria, J. in Jasbhai Motibhai Desai vs. Roshan Kumar, Haji Bashir Ahmed & Ors. (1976 (1) SCC 671) expressed his view that the application of the busybody should be rejected at the threshold in the following terms: (SCC p. 683, para 37) "It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories : (i) 'person aggrieved'; (ii) 'stranger'; (iii) busybody or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for 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. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold."

Krishna Iyer, J. in Fertilizer Corporation Kamgar Union (Regd.) Sundri and Ors. v. Union of India, (1981 (1) SCC 568) in stronger terms stated: (SCC p.589, para 48) "If a citizen is no more than a wayfarer or officious intervener without any interest or concern beyond what belongs to any one of the 660 million people of this country, the door of the court will not be ajar for him."

In Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P., (1990 (4) SCC 449), Sabyasachi Mukharji, C.J. observed: (SCC p.452, para 8) "While it is the duty of this Court to enforce fundamental rights, it is also the duty of this Court to ensure that this weapon under Article 32 should not be misused or permitted to be misused creating a bottleneck in the superior court preventing other genuine violation of fundamental rights being considered by the court."

In Union Carbide Corporation v. Union of India, (1991 (4) SCC 584, 610), Ranganath Mishra, C.J. in his separate judgment while concurring with the conclusions of the majority judgment has said thus: (SCC p.610, para 21) "I am prepared to assume, nay, concede, that public activists should also be permitted to espouse the cause of the poor citizens but there must be a limit set to such activity and nothing perhaps should be done which would affect the dignity of the Court and bring down the serviceability of the institution to the people at large. Those who are acquainted with jurisprudence and enjoy social privilege as men educated in law owe an obligation to the community of educating it properly and allowing the judicial process to continue unsoiled."

In Subhash Kumar v. State of Bihar, (1991 (1) SCC 598) it was observed as follows:

> "Public interest litigation cannot be invoked by a person or body of persons to satisfy his or its personal grudge and enmity. If such petitions under Article 32, are entertained it would amount to abuse of process of the court, preventing speedy remedy to other genuine petitioners from this Court. Personal interest cannot be enforced through the process of this Court under Article 32 of the Constitution in the garb of a public interest litigation. Public interest litigation contemplates legal proceeding for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law. A person invoking the jurisdiction of this Court under Article 32 must approach this Court for the vindication of the fundamental rights of affected persons and not for the purpose of vindication of his personal grudge or enmity. It is the duty of this Court to discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extraordinary jurisdiction of this Court for personal matters under the garb of the public interest litigation".

In the words of Bhagwati, J. (as he then was) "the courts must be careful in entertaining public interest litigations" or in the words of Sarkaria, J. "the applications of the busybodies should be rejected at the threshold itself" and as Krishna Iyer, J. has pointed out, "the doors of the courts should not be ajar for such vexatious litigants".

It will be appropriate at this stage to take note of what this Court felt when dealing with petitions under Article 32 with somewhat similar issues. The petitioner in one case filed writ petition under Article 32 of the Constitution challenging the order of this Court whereby it had affirmed the conviction of two accused and confirmed the death sentence for reasons stated in its judgment in State of Maharashtra v. Sukhdeo Singh (AIR 1992 SC 2100).

The writ petition was dismissed holding that third party has no locus standi to challenge the conviction by filing the writ petition under Article 32 of the Constitution. (See Simranjit Singh Mann v. Union of India (AIR 1993 SC 280) The petitioner there claimed to be a friend of the convicts, and it was held that he has no locus standi to move the Court under Article 32 of the Constitution. Unless the aggrieved party is a minor or an insane or one who is suffering from any other disability which the law recognizes as sufficient to permit another person e.g., next friend, to move the Court

on his behalf; for example, see Sections 320(4-a), 330(2) read with Sections 335(1)(b) and 339 of the Code of Criminal Procedure, 1973 (in short the 'Code'). Ordinarily the aggrieved party has the right to seek redress. Admittedly, it was not the case of the petitioner that the two convicts are minors or insane persons but had argued that since they were suffering from an acute obsession such obsession amounts to a legal disability which permits the next friend to initiate proceedings under Article 32 of the Constitution.

A mere obsession based on religious belief or any other personal philosophy cannot be regarded as a legal disability of the type recognized by the Code or any other law which would permit initiation of proceedings by a third party, be he a friend. It must be remembered that the repercussions of permitting such a third party to challenge the findings of the Court can be serious, e.g., in the instant case, itself the co-accused who have been acquitted by the Designated Court and whose acquittal has been confirmed by this Court would run the risk of a fresh trial and a possible conviction.

Similar view was expressed in Karamjeet Singh v. Union of India (AIR 1993 SC 284).

It was noted that Article 32 which finds a place in Part III of the Constitution entitled "fundamental rights" provides that right to move this Court for the enforcement of the rights conferred in that part is guaranteed. It empowers this Court to issue directions or orders or writs for the enforcement of any of the fundamental rights. The petitioner did not seek to enforce any of his fundamental rights nor did he complain that any of his fundamental right was violated. He sought to enforce the fundamental rights of others, namely, the two condemned convicts who themselves did not complain of their violation. Ordinarily, the aggrieved party which is affected by any order has the right to seek redress by questioning the legality, validity or correctness of the order, unless such party is a minor, an insane person or is suffering from any other disability which the law recognizes as sufficient to permit another person, e.g. next friend, to move the court on his behalf.

Unless an aggrieved party is under some disability recognized by law, it would be unsafe and hazardous to allow any third party be a member of the Bar to question the decision against third parties.

Neither under the provisions of the Code nor under any other statute is a third party stranger permitted to question the correctness of the conviction and sentence.

Based on the above backgrounds, we do not think this a fit case which can be entertained and that too, under Article 32 of the Constitution and is accordingly dismissed, but without costs.