

Calcutta High Court (Appellate Side)

Anindya Sundar Das vs State Of West Bengal And Ors on 23 December, 2022

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

Reserved on: 06.12.2022

Pronounced on: 23.12.2022

WPA (P) 588 of 2022

Anindya Sundar Das

...Petitioner

-Vs-

State of West Bengal and Ors.

...Respondents

Present:-

Mr. Abhratosh Majumder, Mr. Billwadal Bhattacharyya, Mr. Anish Kumar Mukherjee, Mr. Suryaneel Das, Mr. Chiranjit Pal, Ms. Oishee Chaudhury, Advocates ... for the petitioner Mr. S.N. Mookherjee, Id. AG Mr. Amal Kumar Sen, Id. AGP, Mr. Lal Mohan Basu, Advocates ...for the State Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA, CHIEF JUSTICE THE HON'BLE JUSTICE RAJARSHI BHARADWAJ, JUDGE Prakash Shrivastava, CJ:

1. In this public interest petition, the petitioner has challenged the notifications dated 12th of July, 2022 and 29th of September, 2022 imposing fee for availing benefit of Online Queue Management System upon the transporters/exporters exporting their goods to Bangladesh from various international border checkposts located at Indo-Bangladesh Border.

2. The plea of the petitioner is that such imposition of fee imposes unreasonable restrictions upon trucks carrying goods from reaching 2 WPA (P) 588 of 2022 the international border checkposts and that exorbitant high fee without any commensurate service being provided against such fee has been imposed by the State. It has further been pleaded that small scale exporters will be unable to pay such exorbitant fee mandatorily which will prevent such exporters from conducting their business resulting in financial losses to them. It has further been alleged that the respondent no. 1 has ignored the hardships being faced by all exporters, transporters, traders and manufacturers and that the notifications suffer from vice of violation of Article 14 and Article 19(1)(g) of the Constitution and are also violative of Article 265 of the Constitution. It is also alleged that the action of the State is contrary to the trade policy and the impugned notifications are causing undue financial hardship to the sections of the business community including exporters without offering any commensurate service in exchange for the fee being charged.

3. Submission of learned counsel for the petitioner is that the State has no authority to levy such a fee which is in the nature of compulsory extraction of money from the exporters/transporters. He further submits that any such charge can be levied only under the Customs Act and that the

exporters are governed by the Customs Act and the State has no power to regulate the export. He has further submitted that the action of the State is in violation of Articles 366(29A), 265 and 246A of the Constitution of India and it also offends Articles 14 and 19(1)(g) of the Constitution. He has also submitted that the impugned notifications impinge foreign trade policy framed under Section 5 of the Foreign Trade and Development Act.

His submission is that the levy is mandatory because any vehicle not 3 WPA (P) 588 of 2022 paying the levy will be pushed back in queue and its movement will be impeded. In support of his submission, he has placed reliance upon the judgments of the Hon'ble Supreme Court in the matter of Ahmedabad Urban Development Authority vs. Sharadkumar Jayantikumar Pasawalla and Others reported in (1992) 3 SCC 285, in the matter of Federation of Indian Mineral Industries and Others vs. Union of India and Another reported in (2017) 16 SCC 186 and in the matter of Asian Leather Limited & Anr. vs. Kolkata Municipal Corporation & Ors. reported in 2007 SCC OnLine Cal

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4. Learned Advocate General has raised a preliminary objection about maintainability of the petition by submitting that only exporters are affected by the levy and the petitioner is not representing any business community or exporter, therefore, PIL cannot be maintained.

He has further submitted that the levy is optional and those exporters who intend to avail the benefit of Online Queue Management System are only required to pay the fee. He has further produced a bunch of documents during the course of argument and referring to the same he has submitted that the fee has been levied to solve the problem of traffic congestion due to unsystematic and unrationalised parking of vehicles carrying export cargo and that under Article 298 of the Constitution, it is the State's business to make available the facilities on payment of fee and that representation was made by Association of Container Fret Stations and issuance of notification to levy fee is in public interest. In support of his submission, he has placed reliance upon the judgments of the Hon'ble Supreme Court in the matter of Guruvayoor Devaswom Managing Committee and Another vs. 4 WPA (P) 588 of 2022 C.K. Rajan and Others reported in (2003) 7 SCC 546, in the matter of P. Seshadri vs. S. Mangati Gopal Reddy and Others reported in (2011) 5 SCC 484 and in the matter of P.V. Sivarajan & Another vs. Union of India reported in 1959 Supp (1) SCR 779.

5. We have heard the learned counsel for the parties and perused the record. Before entering into the merits of the controversy, the preliminary objection raised by the learned Advocate General about maintainability of the PIL needs to be decided. The record reflects that the writ petitioner is a practicing advocate of this Court unconnected with the business of export. A perusal of the writ petition reveals that in this public interest petition, cause of the exporters has been taken up by projecting the problems which may be faced by them on account of imposition of fee by the impugned notification. The issue of quid pro quo has also been raised which is mainly concerning the exporters. Nothing prevents the exporters to approach the competent Court and raise their grievances. Learned Advocate General has also raised the plea that the impugned levy infact has facilitated such exporters. No exporter is before this Court even in the representative capacity to

ascertain this fact. Hon'ble Supreme Court in the matter of Kishore Samrite vs. State of Uttar Pradesh and Others reported in (2013) 2 SCC 398, considering the issue of locus in a habeas corpus petition, has held that:

"48. Ordinarily, the party aggrieved by any order has the right to seek relief by questioning the legality, validity or correctness of that order. There could be cases where a person is not directly affected but has some personal stake in the outcome of a petition. In such cases, he may move the court as a guardian or next friend for and on behalf of the disabled aggrieved party. Normally, a total stranger would not act as next friend. In *Simranjit Singh Mann v. Union of India*, this Court 5 WPA (P) 588 of 2022 held that (SCC p. 657, para 7) a total stranger to the trial commenced against the convicts, cannot be permitted to question the correctness of the conviction recorded against some convicts unless an aggrieved party is under some disability recognised by law, otherwise it would be unsafe or hazardous to allow a third party to question the decision against him.

49. In *S.P. Gupta v. Union of India*, the Court stated :

(SCC p. 219, para 24) "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...."

50. Dealing with the question of the next friend bringing a petition under Article 32 of the Constitution, this Court in *Karamjeet Singh v. Union of India*, held as under : (SCC p. 670, para 3) "We are afraid these observations do not permit a mere friend like the petitioner to initiate the proceedings of the present nature under Article 32 of the Constitution. The observations relied upon relate to a minor or an insane or one who is suffering from any other disability which the law recognises 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. Admittedly, it is not the case of the petitioner that the two convicts are minors or insane persons but the learned counsel 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. We do not think that such a contention is tenable. The disability must be one which the law recognises."

51. Dealing with public interest litigation and the cases instituted by strangers or busybodies, this Court in the following cases cautioned the courts and even required that they be dismissed at the threshold:

51.1. *Janata Dal v. H.S. Chowdhary*, SCC at p. 347 :

(SCC para 104)

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"104. Sarkaria, J. in *Jasbhai Motibhai Desai v.*

Roshan Kumar 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.'"

51.2. *R&M Trust v. Koramangala Residents Vigilance Group*: (SCC pp. 110-11, para 25) "25. In this connection reference may be made to a recent decision given by this Court in *Dattaraj Nathuji Thaware v. State of Maharashtra* in which Hon'ble Pasayat, J. has also observed as follows : (SCC p. 595, para 12) '12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest, an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong 7 WPA (P) 588 of 2022 or public injury and not be publicity-oriented or founded on personal vendetta.'"

52. On the analysis of the above principles, it is clear that a person who brings a petition even for invocation of a fundamental right must be a person having some direct or indirect interest in the outcome of the petition on his behalf or on behalf of some person under a disability and/or unable to have access to the justice system for patent reasons. Still, such a person must act bona fide and without abusing the process of law. Where a person is a stranger/unknown to the parties and has no interest in the outcome of the litigation, he can hardly claim locus standi to file such petition. There could be cases where a public-spirited person bona fide brings petition in relation to violation of fundamental rights, particularly in habeas corpus petitions, but even in such cases, the person should have some demonstrable interest or relationship to the involved persons, personally or for the benefit of the public at large, in a PIL. But in all such cases, it is essential that the petitioner must exhibit bona fides, by truthful and cautious exercise of such right. The courts would be expected to examine such requirement at the threshold of the litigation in order to prevent abuse of process of court. In the present case, both the appellant and Respondent 8 are total strangers to the three mentioned petitioners. The appellant, in fact, is a resident of Madhya Pradesh, belonging to a political party and was elected from Constituency Tehsil Lanji in District Balaghat at Madhya Pradesh. He has no roots in Amethi and, in fact, he was a stranger to that place. The appellant as

well as Respondent 8 did not even know that the persons on whose behalf they have acted as next friend had shifted their residence in the year 2010 to Hardoia in District Faizabad. They have made false averments in the petition and have withheld true facts from the Court."

6. In the matter of Guruvayoor Devaswom Managing Committee (supra), considering the scope of maintainability of public interest litigation, Hon'ble Supreme Court has held that:

"Scope of public interest litigation

41. The courts exercising their power of judicial review found to their dismay that the poorest of the poor, the deprived (sic), the illiterate, the urban and rural unorganized labour sector, women, children, those handicapped by "ignorance, indigence and illiteracy" and other downtrodden persons have either no access to justice or had been denied justice. A new 8 WPA (P) 588 of 2022 branch of proceedings known as "social action litigation" or "public interest litigation" was evolved with a view to render complete justice to the aforementioned classes of persons. It expanded its wings in course of time. The courts in pro bono publico granted relief to inmates of prisons, provided legal aid, directed speedy trials, maintenance of human dignity and covered several other areas. Representative actions, pro bono publico and test litigations were entertained in keeping with the current accent on justice to the common man and a necessary disincentive to those who wish to bypass real issues on merits by suspect reliance on peripheral procedural shortcomings.

(See Mumbai Kamgar Sabha v. Abdulbhai Faizullabhai.)

42. The Court in pro bono publico proceedings intervened when there had been callous neglect as a policy of State, a lack of probity in public life and abuse of power in control and destruction of the environment. It also protected inmates of prisons and homes. It sought to restrain exploitation of labour practices.

43. The Court expanded the meaning of life and liberty as envisaged in Article 21 of the Constitution of India. It jealously enforced Article 23 of the Constitution. Statutes were interpreted with human rights' angle in view. Statutes were interpreted in the light of international treaties, protocols and conventions. Justice was made available having regard to the concept of human rights even in cases where the State was not otherwise apparently liable. (See Kapila Hingorani v. State of Bihar.)

44. The people of India have turned to courts more and more for justice whenever there has been a legitimate grievance against the State's statutory authorities and other public organizations. People come to courts as the final resort, to protect their rights and to secure probity in public life.

45. Pro bono publico constituted a significant state (sic) in the present-day judicial system. They, however, provided the dockets with much greater responsibility for rendering the concept of justice available to the disadvantaged sections of the society. Public interest litigation has come to stay and its necessity cannot be overemphasized. The courts evolved a jurisprudence of compassion.

Procedural propriety was to move over giving place to substantive concerns of the deprivation of rights. The rule of locus standi was diluted. The Court in place of a disinterested and dispassionate adjudicator became an active participant in the dispensation of justice.

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46. But with the passage of time, things started taking different shapes. The process was sometimes abused. Proceedings were initiated in the name of public interest litigation for ventilating private disputes. Some petitions were publicity-oriented.

47. A balance was, therefore, required to be struck. The courts started exercising greater care and caution in the matter of exercise of jurisdiction of public interest litigation."

7. Having regard to the nature of issue which has been raised by the petitioner, we are of the opinion that a PIL on such an issue at the instance of an advocate practicing in this Court having no connection with the issue cannot be entertained especially when the affected persons are adequately well off to raise their personal cause in the appropriate judicial proceedings. So far as reliance of learned counsel for the petitioner in the matters of Ahmedabad Urban Development Authority (supra), Federation of Indian Mineral Industries (supra) and Asian Leather Limited (supra) is concerned, these judgments relate to the issue of a levy without authority of law which is an issue on merit which can be raised by the effected parties in appropriate maintainable proceedings. Even if the rule of locus is relaxed in a PIL, yet the issue which is involved in the present petition cannot be permitted to be raised at the instance of a person totally unconnected with the issue and unaffected by the notification. Hence, the benefit of the order of this Court dated 28th of September, 2021 passed in WPA (P) 213 of 2021 in the case of Ambika Roy vs. The Hon'ble Speaker, West Bengal Legislative Assembly and Ors.

cannot be extended to the petitioner. Learned counsel for the petitioner has also placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of State of Uttaranchal vs. Balwant Singh Chauhal & Others reported in (2010) 3 SCC 402 but in that 10 WPA (P) 588 of 2022 judgment also, it has been held that the Court should prima facie verify the credential of the petitioner before entertaining a PIL and that the Court should be fully satisfied that substantial public interest is involved before entertaining the petition and the Court should, before entertaining the PIL, also ensure that the PIL is aimed at redressal of genuine public harm or public injury. The above test is not satisfied in the present case.

8. Hence, the preliminary objection raised by the learned Advocate General is sustained and present public interest litigation is held to be not maintainable which is accordingly dismissed, however, making it clear that if any affected party approaches the competent Court, then the issue will be decided on its own merit without being influenced by any observation made in this order. The petition is accordingly dismissed.

(PRAKASH SHRIVASTAVA) CHIEF JUSTICE (RAJARSHI BHARADWAJ) JUDGE Kolkata
23.12.2022 _____ PA(RB) (A.F.R./N.A.F.R.)