

Court No. - 3

Case :- MISC. BENCH No. - 13915 of 2016

Petitioner :- Indra Pal Singh (I.P. Singh)

Respondent :- State Of U.P. Thru Prin.Secy.Home Civil Sectt. Lucknow & Ors

Counsel for Petitioner :- Asok Pande, Satyendra Kumar Mishra, Tripuresh Kumar Tripathi

Counsel for Respondent :- Govt. Advocaes, A.S.G., Amarjeet Singh Ranhra

Hon'ble Shri Narayan Shukla, J.

Hon'ble Suneet Kumar, J.

(Delivered by Hon'ble Suneet Kumar, J.)

The registry has raised an objection for deposition of Rs. 25,000/- by Mr. Asok Pande before entertaining the petition to be filed by him, whereas, in the present case Mr. Pande has appeared as counsel, therefore, we are of the view that as and when he appears as counsel the observation of this Court in Writ Petition No. 8216 (M/B) of 2016 for deposition of cost of Rs. 25,000/- shall have no bearing, in the result the objection is overruled and the writ petition is entertained.

We have heard Mr. Asok Pande, learned counsel for the petitioner, Mrs. Bulbul Godiyal, Additional Solicitor General and Sri Jagdeep Singh Yadav, learned counsel for the opposite party no. 2.

The petitioner has sought the following reliefs:-

"a) To issue a writ of certiorari thereby quashing the decision of the state government dated 7/06/2016 thereby appointing a retired judge of the Allahabad High Court namely Sri Imtiaz Murtaza to hold the enquiry into the Jawaharbagh

incident in which two police officers and several common citizens has been murdered after summoning the same and to direct the government to appoint the commission headed by some judge well versed with the Hindu Dharma.

b) To issue a writ of mandamus thereby directing the respondents concerned to register the first information report against the police officers for committing the murder of several persons and to entrust the investigation of the said case to the Central Bureau of Investigation.

c) Issue any other order or direction as this Hon'ble Court may deem fit in the circumstances of the case."

At this stage, the petitioner has sought permission to not press the relief no. (a).

Permission is granted.

Now the petitioner has pressed the writ petition only for the relief no. (b).

The writ petition stands **dismissed** for the reasons to follow.

The operative part of the order was passed in the open court, the reasons in support of the order was deferred for paucity of time which is being supplied.

The petition in the nature of Public Interest Litigation (PIL) has been instituted by Sri Indra Pal Singh (I.P. Singh) son of Sri Surya Nath Singh. The credentials of the petitioner is detailed in paragraph 5, which reads as follows:

"That the petitioner is a social activist and the spokes person of Bhartiya Janta Party, he was also the student leader and has held the office of general secretary of the Lucknow University students Union. He was also the chairman of Uttar Pradesh Labor Federation for some time. At present he is aggrieved by the massacre of the Satyagrahies and conversion of Jawaharbagh Park

into Jaliawalabagh and so approaches the Hon'ble Court for the Central Bureau of Investigation enquiry."

Petitioner seeks a direction to the respondents to register a First Information Report against the police officers for committing murder of several persons and to entrust the investigation of the said case to the Central Bureau of Investigation (CBI). The subject matter of the petition pertains to an incident that occurred at Jawahar Bagh Park at Mathura purportedly on 2 June 2016. The occupants were evicted from the park by the District administration pursuant to an order passed by this Court in **Vijay Pal Singh Tomar Versus State of U.P. and others**¹. The direction (dated 20 May 2015) is extracted:

"Having regard to the statement of law laid down by this Court, we are of the view that the authorities of the State including the Principal Secretary (Home), District Magistrate, Mathura and Senior Superintendent of Police must take all necessary steps and precautions to ensure that a public park is not allowed to be encroached upon in this manner. The rule of law has to be preserved. Unless a strong message is sent out, it would only result in a situation where a violation of law is encouraged by permitting an encroachment on public spaces in violation of the law.

Accordingly, we direct the respondents to inquire into the matter and take appropriate action in accordance with law expeditiously."

Sri Asok Pande, learned counsel for the petitioner would contend: (i) the park (Jawahar Bagh) was not encroached but was occupied by the occupants upon permission obtained from the concerned authorities,

1. PIL No. 28807 of 2015

though they had overstayed; (ii) satyagraha was peaceful, the satyagrahis were not assailants; (iii) criminal force was not used by the satyagrahis in attacking the police personnel; (iv) F.I.R. was not lodged against erring police officers for the murder of 32 persons; (v) the matter relates to a dispute with respect to a Hindu religious outfit, therefore, it is improper to appoint a Muslim Judge to enquire into a purely religious matter, (vi) under the garb of a direction issued by the High Court to evict the satyagrahis, the police could not have resorted to excessive force killing 32 civilians .

Learned counsel for the respondents have vehemently opposed the petition contending: (i) the petition is not maintainable as it has been instituted by a political person; (ii) the averments in the petition is scandalizing, (iii) under the Commission of Enquiry Act, 1952 (Act 1952) the State has power to appoint a retired Judge to conduct the enquiry.

Before we proceed to examine the rival contentions and submissions, it would be appropriate to scan through the pleadings.

The petitioner admittedly is a political person being spokesperson of a national political party and is personally aggrieved. In paragraph 10 of the petition, it is averred that the satyagraha by the occupants was peaceful, the satyagrahis were not assailants, further, the occupants of the park have a fundamental right to assemble in a public place. The force used by the police personnel to evict the satyagrahis resulting in the death of 32 civilians is an

example of excessive force inflicted against the occupants. The State including the Home Secretary and Director General of Police are defending the police action.

In paragraph 19 of the petition, it has been categorically pleaded that in appointing Justice Imtiaz Murtaza a former Judge of the High Court to enquire into the incident, being a muslim, would not be justified as the issue pertains to a hindu religious outfit related to Baba Jai Gurudev, therefore, it is averred that some Judge well versed with Hindu culture and Dharma should be appointed to enquire the matter. Paragraph 19 of the petition reads as follows:

"That the petitioner is praying for the quashing of the justice Imtiaz Murtaza Commission for the reason that the matter relates to a dispute with respect to a Hindu religious outfit and so it is improper to appoint a Muslim Judge to enquire into a purely religious matter related with Baba Jai Gurudev and so in place of Sri Imtiaz Murtaza, some judge well versed with Hindu culture and Dharma should be appointed to enquire the matter. The petitioner also want to change the head of the enquiry commission from Sri Imtiaz Murtaza to some another judge as it will be difficult for Sri Murtaza himself to understand the basic problem which is one of the reason of Ram Vrikchh Yadav coming to Mathura and staying there for more than 2 years in Jawahar Bag Park where the incident took place".

In paragraph 20, assertions have been made that the investigation of the incident at Mathura be transferred to CBI, though no such prayer has been made but was verbally pressed by Sri Pande.

Only prayer pressed by learned counsel for the petitioner is that the respondents be directed to register a

First Information Report (FIR) against the police officers

In our opinion, such a direction at this stage cannot be issued as the petitioner, under the Criminal Procedure Code (Cr.P.C.), can himself lodge a F.I.R. or take recourse to the procedure prescribed therein by approaching the concerned Magistrate. A direction for which remedy is available under law would not generally be issued by the Court unless compelling circumstances in not registering the F.I.R. is pleaded and supported by documents showing the bonafide intention of the petitioner. The entire petition is bereft of the material details of the unfortunate incident that occurred at the park. The details leading to the incident has not been pleaded. How and why the park was occupied; whether prior permission was obtained from the district authorities; the number of occupants, their composition i.e. number of men, women and children assembled in the park has not been given by the petitioner. The dynamics and the economics of the supply of food and lodging of occupants in sustaining themselves for two years is missing. Whether the occupants were members of a militant outfit shielding themselves behind innocent persons, including women and children, is not known to the petitioner. Whether any arms and ammunitions were seized from the occupants, if yes, how did it reach the park has not been explained, rather the petitioner, though being a political person, has maintained an eerie silence.

The petitioner neither the learned counsel appearing for the petitioner have made any effort to ever peruse the

order passed in **Vijay Pal Singh Tomar** case (supra). The Court noticed therein that an organisation in the name of Swadheen Bharat Vidhik Satyagrah also known as Swadheen Bharat Subhash Sena occupied the park since 11 January 2014. The District Magistrate on 15 August 2014 addressed a communication to the Chief Secretary of the State Government regarding unauthorized occupation of the park by a group of persons. The District Horticulture Officer, Mathura also addressed a communication to the Senior Superintendent of Police, Mathura on 17 March 2015 with a copy to the Divisional Commissioner and the Collector, Mathura for necessary action. The letter records that two thousand four hundred trees have been burnt by the occupants illegally occupying the park, causing damage to the property of the State. On 27 April 2015, the Commissioner, Agra Division, Agra has addressed a communication to the Collector and Senior Superintendent of Police noting that members of Swadheen Bharat Vidhik Satyagrahi (Jai Gurudev) have taken over unlawful possession of the public park; that employees are being assaulted and nearly three thousand trees have been destroyed for firewood.

On reading the petition and the averments made therein, we have no doubt in holding that the petition which is styled as PIL is nothing but a camouflage to foster cheap and malicious publicity. It is not being disputed by the learned counsel, that the petitioner before the court is a political person and a busy body. The grievance of the petitioner is primarily the religion of the Judge appointed

to head the Commission of Inquiry under Act, 1952. Such a pleading laid and pressed before a constitutional Court, admittedly, is against the constitutional scheme without any foundation and basis. Religion has not been assigned any role in the appointment of judges of commissions or for that matter for any office under the State, as such, the petition is not only malicious but has been filed with an ulterior motive which tantamounts to interfere not only with the judicial process but also goes to the root in questioning the constitutional scheme based on rule of law.

Supreme Court in **Holicow Pictures Pvt. Ltd. Versus Prem Chandra Mishra and others²**, observed as under:

"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.....

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

2. AIR 2008 SC 913

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." (**Refer: The Janta Dal v. H.S. Chowdhary³, and Kazi Lhendup Dorji v. Central Bureau of Investigation⁴. Ramjas Foundation v. Union of India⁵ and K.R. Srinivas v. R.M. Premchand⁶.**

Division Bench of this Court in **Swami Prasad Maurya and another Versus State of U.P. and others⁷**, made the following observations:

".....A public purpose may be protected under a political theology or agenda of a political or social entity, but the protection of a public purpose has to be in public interest and not on mere

3. [1992] 4 SCC 305

4. [1994] Supp 2 SCC 116

5. AIR (1993) SC 852

6. [1994] 6 SCC 620]

7. decided on 26.11.2016 in Writ Petition No. 10841 (M/B) of 2015

political considerations. A legal battle for a public purpose cannot be utilised for settling political scores..... A public purpose cannot be a game dice on the choice of politicians in a legal arena. The wrestling theatre for achieving political mileage is elsewhere and not a court of law....."

We need not burden the order by referring to the large number of judgments rendered by the Apex Court on the scope and ambit of PIL. Having considered the statement of law, we are of the view that the present petition is not a bonafide PIL but has been filed with some ulterior motive to gain political millage and to scandalize not only the administration of justice, but also the Government in appointing Commission of Inquiry headed by Justice Imtiaz Murtaza, a former Judge of this Court. We have recorded in the earlier part of the order that the necessary details of the incident has not been spelled by the petitioner, nor did he approach any of the authorities in lodging F.I.R. of the incident. The counsel for the petitioner was unable to suitably reply to the specific query of the Court regarding petitioner not approaching any of the State Authorities. It is in this background, we hold that the petition styled as PIL is not a genuine petition filed for the aid and assistance of the families which have suffered due to the illegal occupation of the park by members of a self styled organization.

As regards the conduct of Sri Asok Pande, learned counsel for the petitioner, it may be noted that a Division Bench of this Court in **Hindu Personal Law Board Versus Union of India and others (Writ Petition No. 8216 (M/B) of 2016)** vide order dated 19.04.2016 passed in a petition, filed in the nature of a PIL by Sri

Pande in person, the Court admonished the conduct of Sri Pande and directed the Registry of this Court that each petition instituted by Sri Pande in person be accepted for filing, only if, it is accompanied by a demand draft of Rs. 25,000/-.

In the given facts of this case, a serious issue on communal lines has been pleaded tarnishing the image of the Judge merely for the reason of his religion, which has been the modus operandi of Sri Pande in several earlier petitions drafted and filed by him.

We are constrained to take notice of the fact that Sri Pande, a practicing lawyer of this Court, who has a standing at the Bar, however, since long has been indulging in reckless drafting, which is not only malicious and motivated but the conduct of the counsel is unbecoming of a legal practitioner which ultimately tantamounts to misconduct under the Advocates Act, 1961 (Act 1961). A professional duty includes the counseling to client, legal opinions, drafting, affidavits, pleading and participating in law conferences. The duty requires, the counsel to maintain the decorum of judicial proceedings, take great care and caution while drafting a petition without tarnishing the image of any institution, office, Judge or the Constitution. The averments made in para 19, which has been extracted hereinabove, would clearly indicate the reckless and causal approach of the learned counsel. The averments specially seeking a direction to appoint a commission headed by "some Judge well versed with the Hindu Dharma", further, "the persons

who murdered Satyagrahies are not properly prosecuted and punished, it will ruin the basic fundamental right guaranteed by Article 19 of the Constitution and in any place in the country, if a Satyagrah or Dharna on a particular issue by a particular group may be a political party or religious outfit, will not suit the State Administration, the persons doing Satyagrah will be murdered in the name of police action and encounter.", further, ground (h) reads as follows:

"even in the case of **Ishrat Jehan**, a lady accompanying with Pakistani terrorist and their killing in police encounter, the CBI enquiry took place whereas in the present matter, the persons who died were such citizens who left their house for years with the object to change the present way of governance and peacefully protesting in a park, which was a public park and the persons who gathered there were not the Pakistani terrorist, rather, the common citizens who were protesting without any violence from more than 2 years."

The petition read as a whole and especially the averments extracted would, prima facie, establish that it is a deliberate and willful act of the counsel, the reason is not for behind.

In **Hindu Personal Law Board** case (supra) where Sri Asok Pande appeared in person, the Court taking notice of his conduct and drafting noted as under:-

"We find prima facie that the manner in which the petition has been drafted and an effort has been made to target the Chairperson of the Organizing Committee

at Lucknow, who is a sitting Judge of the High Court, is a scandalous attempt to lower the dignity of the Court.

9. That it appears that this 'Harkat' to hurt the sentiments of Hindus was planned by the Chairman of the organizing committee, Sri Shabibul Hasnain and his other religious men in the High Court administration to give the befitting reply to the Governor Sri Ram Naik as during the day session, in the presence of Sri Hamid Ansari, Vice President of India, Sri Ram Naik did Ram Katha and congratulated the persons gathered there on the eve of the Navratri and Ram Navami

10. That it appears that only to give befitting reply to the Governor and other Hindus, the evening culture program, which should have been started with Saraswati Vandana and Vande Mataram started with Allah-hu, Allah-hu, in the name of so-called Sufi gayan."

Further, the Court noted that "the petitioner (**Sri Pande**) is habituated in filing petitions ostensibly styled as public interest litigation. On numerous occasions, various courts have found Sri Ahok Pande to have indulged in drafting pleadings which would not give credit to a member of the legal profession."

The details of the previous petitions filed by Sri Pande wherein malicious averments were made was taken notice by the Division Bench. A petition, *inter alia*, sought to challenge the appointment of the Governor of the State of U.P. which was dismissed being frivolous and highly mischievous. Similarly, appointment of Lok Ayukta was assailed, in which, former Chief Justice, a retired Judge of this Court and a sitting Judge of the Supreme Court were impleaded, wherein, the Court while dismissing the petition was of the opinion that the petition reflected the personal grouse of the petitioner regarding the Judges and orders passed by them and his own interpretation of such orders. The Division Bench after taking notice of the

earlier petitions drafted and filed by Sri Pande passed the following orders:

"First and foremost, we direct the issuance of a notice to the petitioner and Shri Asok Pande to show cause as to why they should not be proceeded against for committing criminal contempt under the Contempt of Courts 1971.....We are of the view that before this Court entertains a petition at the behest of the aforesaid entity and person, a direction should be and is issued to the Registry to the effect that each petition be accepted for filing only if it is accompanied by a Demand Draft of Rs 25,000/- (Rupees Twenty Five Thousands Only) drawn on a nationalised Bank."

Similarly, in a subsequent petition being Writ Petition No. 5085 (M/B) of 2016, **Allama Zamir Naqvi, General Secretary of All India Muslim Council Versus State of U.P and others**, Shri Pande assailed the appointment of Justice Vishnu Sahai, a former Judge of this Court and former Member of the U.P. Human Rights Commission as a one-man commission under the Commission Enquiry Act 1952. The Division Bench repelling the argument for transferring the investigation to CBI instead of a commission being appointed by the Government under the Act 1952, observed as follows:-

"The other argument with regard to setting up an investigation through the CBI cannot be mixed up with the issue relating to the appointment of a Commission by the Government under the 1952 Act. **The issue of transferring a criminal investigation to the CBI has to be founded on appropriate facts which are to be pleaded in order to persuade a Court of Law to pass an order for taking up the investigation by some other agency. The present writ petition as framed does not bring on record any such material that may impel us to draw a conclusion that the investigation now deserves to be carried out by some other agency.**

The question of entrusting the investigation to the CBI can only be considered if there is sufficient material as delineated in the case of **Secretary, Minor Irrigation & Rural Engineering Services, U.P. and others versus Sahngoo Ram Arya and another [(2002) 5 SCC 521]**. It is no doubt true that the Constitution Bench in the case of **State of West Bengal and others versus Committee for Protection of Democratic Rights, West Bengal and others [(2010) 3 SCC 571]** has acknowledged the powers of the Court to order an investigation by the CBI. The powers of the Court are circumscribed and can be exercised only if there is sufficient material to do so as per the ratio in the cases indicated above. Two other judgments may be mentioned where the Supreme Court has traversed the law relating to the powers of the High Court in proceeding to order for a CBI enquiry, namely, **Bharati Tamang versus Union of India and others [(2013) 15 SCC 578]** and **Mithilesh Kumar Singh versus State of Rajasthan and others [(2015) 9 SCC 795]**. The said issue has also been dealt with in the latest decision of the Supreme Court in the case of **Pooja Pal versus Union of India and others [JT 2016 (1) SC 430]**."

That apart, the tone and tenor of Sri Pande while addressing the Court is of arrogance and threat which is also reflected from his body language. Upon being warned, Sri Pande would insist on advancing arguments without taking care of maintaining the decorum and dignity of the Court. Sri Pande would thereafter insist that his arguments be incorporated and noticed in the order irrespective of its legal relevance.

Having considered the given facts and circumstances of the case, we are of the considered opinion that the petition styled as PIL is a frivolous, mischievous petition filed for personal gains instituted at the behest of a person seeking publicity, therefore, deserves to be **dismissed** with cost assessed at Rs. 25,000/- to be deposited by the

petitioner with the Collector Lucknow within eight weeks from date, failing which, the District Magistrate, Lucknow shall recover the sum as arrears of land revenue from the petitioner Indra Pal Singh.

The conduct of Sri Asok Pande in filing and drafting reckless petitions containing scandalous pleadings and being motivated by personal agenda to malign the persons holding constitutional positions tantamounts to misconduct unbecoming of a responsible legal practitioner which is violative of the provisions of Advocates Act, 1961 and the Rules framed thereunder.

Having due regard to the contents of the plethora of petitions drafted and filed by Sri Pande and the averments made therein, we are, prima facie, of the opinion that Shri Pande is incorrigible. Despite strictures and orders passed against him by the Court on several occasions, Sri Pande has shown no remorse or regret, it would, therefore, be in the interest of justice that the matter be referred to the Bar Council of Uttar Pradesh to initiate disciplinary proceedings against Sri Pande to adjudge his suitability to continue practice as an Advocate.

Registrar is, therefore, directed to send a copy of this order to the Chairman, Bar Council, U.P., Allahabad alongwith the order dated 19 April 2016 passed in **Hindu Personal Law Board Versus Union of India and others (Writ Petition No. 8216 (M/B) of 2016)** for compliance. It is expected that the Council would conclude the enquiry within three months from the date of service of this order provided Sri Pande cooperates with the

enquiry. It will be open for the Council to consider as to whether the certificate to practice granted to Sri Pande needs to be suspended during enquiry.

We clarify that the observations which are contained in this order on the facts which have led to refer the matter to the Bar Council is only a prima facie expression of opinion of the Court with regard to the conduct of Sri Pande, the Council shall pass order on merit without being influenced by the observations made in the order.

Order Date :- 13.6.2016

kkm/

(Suneet Kumar, J.)

(Shri Narayan Shukla, J.)