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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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W.P.(CRL) 1738/2018

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Reserved on: 31st May, 2018
Date of decision : 6th June, 2018

MEHMOOD PRACHA

..... Petitioner

Through : *Petitioner in person*

versus

INTELLIGENCE BUREAU & ORS.

.... Respondents

Through : *Mr. Manik Dogra, Adv. for
the Union of India*

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT

GITA MITTAL, ACTING CHIEF JUSTICE

1. The writ petitioner, a practicing Advocate of this court, has filed the present writ petition submitting that the same is in public interest. By way of the petition, he seeks the following reliefs :

“(a) To constitute a Special Investigation Team (SIT), which is responsible to report only to this Hon'ble Court.

(b) To issue a writ of Mandamus or any other writ in the nature of Mandamus directing the Special Investigation Team constituted by this Hon 'ble Court, to investigate into all the

aspects of the hostage crisis which hostages have now been declared to have been killed by ISIS and

(c) To issue a writ of Mandamus or any other writ in the nature of Mandamus directing the Respondents to provide all the information required including documents/communication etc. and make the same available to the Special Investigation Team

(d) To issue a writ of Mandamus or any other writ in the nature of Mandamus directing the Special Investigation Team (SIT) constituted by this Hon'ble Court to file monthly reports before this Hon'ble Court."

2. So far as the basis of the writ petition is concerned, it is claimed by the petitioner that *"he has done the necessary inquiries to investigate and to determine the veracity of the facts mentioned in the present writ petition"*. In the grounds, the petitioner alleges that the respondents have failed in their duty of protecting the lives of the 39 Indians, who were held hostage by the ISIS in Iraq. So far as the basis of this allegation is concerned, it is submitted that *"on the basis of the material available in the public domain"*, the petitioner asserts that the *"citizens of this country as well as the relatives of the hostages"* have a right to know what steps were taken to save the hostages and *inter alia* *"why Harjit Masih was taken into custody and persecuted in India."*

3. So far as the prayer for a probe is concerned, it is contended that *"a fair and impartial judicial probe ought to be conducted to establish whether the failure to protect the lives of the Indian captives was on account of mere negligence of duty or a deliberate and wilful act."*

In other words, the entire writ petition is premised on alleged “*failure of the respondents to protect the lives of 39 Indian captives who were held hostage by the ISIS in Iraq.*”

4. The petitioner’s suspicion rests on his allegation that the Government has made contradictory statements to the effect that the 39 Indian hostages were alive when they had actually been killed. This submission rests on a statement attributed to one Harjit Masih who had escaped from the custody of the ISIS in 2014 and had claimed that the captives were dead.

5. The second ground on which the petitioner rests his suspicion is an incident of his intended travel to Iraq as part of a delegation of prominent Indian Muslims civil society members and activists in 2014 and his being offloaded from the Baghdad flight on the strength of a document referred to as a LOC issued by the respondent no.1. The petitioner has filed ***W.P.(C) No. 3826/2015 titled Mehmood Pracha vs. Intelligence Bureau & Ors.*** challenging his offloading. We therefore, desist from making any observation on the contentions of the petitioner premised on his being off loaded and the extensive submissions made in a petition based thereon.

Factual basis regarding the events raised in the writ petition

6. The writ petitioner has referred to a disclosure made on 20th March, 2018 with regard to the 39 Indian citizens, who had been taken captive and held as hostages by the ISIS in Iraq, as having been killed and their mortal remains having been brought back to India.

7. During the course of hearing before us, Mr. Manik Dogra, learned counsel for the respondents has handed over a copy of a statement dated 20th March, 2018 made by the Minister for External Affairs, Government of India on the floor of the Rajya Sabha. This statement has been taken on record. The statement in single space runs into 18 pages and gives close details of the entire operations undertaken by the Government of India upon the unfortunate incident of the Indian nationals having been taken into captivity.

8. Additionally, the respondents have placed an extract of the key dates and events (detailed in the said statements) before us. So far as the key date and events are concerned, it is disclosed as follows :

(i) Some Indian workers from the states of Punjab, Bihar, Himachal Pradesh and West Bengal who were employed by M/s Tarek Nour al Houda in Iraq, were working with the United Lake Towers in a construction company in Mosul on a building project in the Mosul Lake Area, Iraq.

(ii) On the 9th/10th June, 2014, the Islamic State of Iraq and Syria (ISIS) militants took over large areas in Central and Northern Iraq including the city of Mosul.

(iii) Indian workers were trapped in the conflict zone, and taken into captivity by the militants.

(iv) On the 15th of June, 2014, one individual citizen Harjit Masih telephoned the External Affairs Ministry from the Erbil area in Iraq, informing that his fellow 39 Indians in Mosul had

been shot dead and that he had managed to escape from that scene.

(v) However, two families of the said Indian workers received telephone calls from them at Mosul on the 17th of June, 2014 and the 21st of June, 2014, giving the lie to the statement made by Harjit Masih that the Indian workers had been killed.

(vi) As the security situation in Iraq further deteriorated, on 15th June, 2014, a 24x7 helpline, which ran round the clock as well as dedicated control rooms were set up by the Indian Embassy in Baghdad as well as the Ministry of External Affairs, to assist the Indian nationals in Iraq as well as their concerned family members in India. A travel advisory was also issued to Indian nationals with regard to travelling to Iraq.

(vii) On 21st June, 2014, a control room was set up in Erbil, Iraq as well to trace out the whereabouts of the missing Indian citizens.

(viii) Between September, 2014 to July, 2017, the Minister of External Affairs met the family members of the missing Indian citizens on multiple occasions to update them on India's ongoing efforts, including meeting with other governments to safety rescue them.

(ix) The *Ministry of Foreign Affairs of Iraq sent a note dated 6th March, 2017* in response to the note of the Indian Embassy, Baghdad dated 28th November, 2016 seeking update of the

missing Indians. In its note, the *Ministry of Foreign Affairs of Iraq* had categorically stated therein that “*till now the concerned Iraqi authorities have no confirmed information about the destiny of the kidnapped Indian nationals.*”

(x) On 9th July, 2017 the Iraqi Prime Minister announced the important event of the liberation of Mosul city from the control of the ISIS militants.

(xi) Within two days of the liberation of Mosul city, the Minister of State for External Affairs, Government of India, visited Erbil, Iraq from 11 to 12th July, 2017 to look for the Indian nationals.

(xii) In the statement made by the Minister of External Affairs, Government of India on 20th March, 2018, we are informed that the Minister had specifically directed the Minister of State to meet the owner of the company in Mosul to get crucial dates and information regarding the missing Indians.

(xiii) As per the Minister's statement on 20th March, 2018, General (Retd.) V.K. Singh, Minister of State for External Affairs visited Iraq and met the owner of the company. The relevant extract about the information given by the owner of the company to General (Retd.) V.K. Singh, as disclosed by the Minister on the floor of the house is reproduced hereunder:

“...I back this statement with the evidence that the last time when General(retd) VK Singh went to Iraq to find him, I had told him

that the first thing you must do is to go and meet the owner of the company in Mosul. That is where you will get some crucial leads and information. As instructed, he started his visit to Iraq from Mosul, where he went and first met the owner of the company. When he spoke to him, the owner of the company told him what had happened. The owner of the company told Mr. Singh that 40 Indians and some Bangladeshis used to work for him. He said, "When we saw that ISIS had started taking over Mosul, I told all my employees to leave as soon as possible. Iraqi nationals were the first to leave. This was followed by nationals of other countries, but the Indians and Bangladeshis did not leave." He went on to say that after that he had called a caterer who used to provide food for his employees. The caterer said that one day, when the Bangladeshis and Indians were on their way to eat food at his place, ISIS terrorists saw them and questioned, "Who are you people?" To this , one of them replied, "These are Indians and we are Bangladeshis." After hearing this they (ISIS terrorists) said that these people will not stay here anymore. They ordered that the man be taken to a textile factory, which was under ISIS control. When they reached the textile factory, they ordered that the Bangladeshis and Indians be kept separately. Then, one day, the ISIS terrorists said that the Bangladeshis be taken and dropped in Erbil. The caterer said that this task was assigned to him, and he got ready to take the Bangladeshis to Erbil in his van. That night, what methods Harjit took to escape, he knows; I believe that he (Harjit) told the owner of the company to give him a Muslim name and send him off with the Bangladeshis. The owner of the company said that he had received a phone call from someone named Ali. To this he replied that I do not have any employee who has the name Ali. To this the caller replied, "I am the person who has to be sent away with the Bangladeshis." To this he said "ok, ok." The caterer has confirmed that he dropped Harjit Masih under the alias 'Ali ' along with the Bangladeshis in Erbil."

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When the ISIS terrorists saw the next day that they (the Indians) are only 39 in number, instead of 40 - since they did a headcount

every night before going to sleep - the ISIS terrorists took a decision that it was not safe to keep the Indians at that location anymore. They ordered an ISIS 'commander' to take the captive Indians to Badush. The owner of the company said that "after that I do not know what happened to them." He said that ISIS had control of a prison in Badush, but he does not know if the Indians were kept in that prison or were killed. The owner of the company said that once the Indians were taken from Mosul, he was no longer in touch with them"

We are given complete details about the further information which could be collected during this visit.

It appears that this was the first of several visits made by the Minister of State, External Affairs Iraq to trace the missing Indians. What is important is that the information received by General (Retd.) V.K. Singh highlights the complete lie in the statement made by Harjit Masih in the phone call to the Ministry on 15th June, 2014, that by then, the Indians had already been killed.

(xiv) On 14th July, 2017, the Minister of External Affairs, Government of India herself visited Baghdad to meet the Foreign Minister of Iraq. An assurance was given by the Foreign Minister of Iraq that he would provide the Indian authorities with any information on the missing Indians when made available.

(xv) In the meanwhile, so far as the concerns of the families of the Indian hostages is concerned, a series of meetings were held. Amongst the meetings held by the Minister of External Affairs

alongwith the Minister of State for External Affairs, Government of India with the families of the missing Indians, following the liberation of the Mosul, Iraq from the ISIS control the 12th meeting was held on 16th July, 2017 and the family members were apprised about the entire turn of events.

(xvi) The statement made on 20th March, 2018 discloses that matters did not stop at the above efforts. On 24th July, 2017, the Minister of External Affairs, Government of India had informed ***Mr. Ibrahim Al-Jaafari, the Foreign Minister of Iraq*** that there was no evidence of the 39 Indian workers being alive or dead.

(xvii) ***Mr. Al Jaafari had assured of assistance in tracing them and had replied that there was still uncertainty about the situation of the Indians and that there were rumours that they may have shifted to another prison or moved to Syria, however, there was no proof of the same.***

(xviii) In the meantime, the Ministry of External Affairs, Government of India had on 7th September, 2017 initiated the process of collection of blood samples of the relatives of the missing Indian workers.

(xix) Between 24th to 31st October, 2017, in one mound, a mass grave was discovered in Village Badush, Iraq which was suspected to be of non-Iraqis.

(xx) The Minister of State for External Affairs, Government of India revisited Iraq for the second time and met the Foreign

Minister of Iraq; Secretary General of Council of Ministers and UNAMI Officials, Iraqi NSA and Chief of Staff of Iraqi Armed Forces, US Ambassador to Iraq; Head of International Committee of Red Cross in Baghdad; Head of Martyrs Foundation and Department of Protection of the Mass Graves and other relevant officials, for information regarding the missing Indian citizens.

We are informed that the Indian Minister of State also visited Mosul, Village Badush and Tal Afar.

(xxi) The Iraqi officials again requested India to provide the DNA samples of close relatives of the missing Indians as soon as possible.

(xxii) In the meantime, at the instance of Gen. V.K. Singh (Retd.), Minister of State for External Affairs, the mound at Village Badush was checked by ground penetration radar till its bottom when it was revealed that the mound had human remains, confirming that it was a mass grave.

(xxiii) So far as the DNA sampling is concerned, the respondents have disclosed that between 13th to 17th November, 2017, 19 DNA samples of close relatives of missing Indians (*16 from Punjab and 3 from Himachal Pradesh*) were acknowledged. Subsequently, two additional lots, one of 5 samples from Punjab and 7 (*2 from Punjab and 5 from Bihar*) samples, being a total of 30 samples were collected and despatched to Iraq for DNA profiling and matching.

(xxiv) In December, 2017, the Martyrs Foundation, Iraq opened the mass grave and commenced the process of transporting the human remains for identification to the Forensic Department in Baghdad.

(xxv) On 13th December, 2017, two more DNA Samples received from the States Division were forwarded to the Mission in Iraq bringing the total number of the relatives' samples to 33.

In February, 2018, 5 more samples received by the government were sent to the Mission through special couriers in two lots.

(xxvi) On 19th March, 2018, the Martyrs Foundation and the Forensic Department of Iraq (*which was conducting the DNA testing and matching*) informed the Indian Government that the DNA profiles of the 38 samples matched those of 38 of the bodies recovered from the mass grave in Village Badush.

(xxvii) It was only after undertaking this elaborate exercise of establishing and confirming the identity of the bodies recovered from the mass grave as that of the Indian workers that on 20th March, 2018, the Minister of External Affairs, Government of India informed the Rajya Sabha regarding the confirmation received that the mortal remains of 38 persons found by the authorities in the mass graves in Village Badush near Mosul, Iraq were confirmed to be of thirty eight missing Indians, who were taken captive by the ISIS from Mosul.

(xxviii) The care which was taken by the authorities is evident from the fact that it was even disclosed that so far as the 39th missing Indian worker - Raju Kumar Yadav was concerned, no close relatives were available for DNA sampling and matching. The sample received of his relative, could match only up to 70% with that of the remaining unidentified human remains.

(xxix) In this background, these disclosures could be made by the Minister of External Affairs and the Minister of State for External Affairs, Government of India in a press conference on that date.

(xxx) On 26th March, 2018, the Minister of External Affairs met families of the 39 Indians killed in Iraq, for the 13th time. The Minister informed these family members that the mortal remains would be brought back in a week's time and that the Minister of State for External Affairs, Government of India would personally go to Iraq to bring back the mortal remains.

(xxxi) For this purpose, between 1 to 2nd April, 2018, the Minister of State for External Affairs, Government of India personally travelled to Iraq to bring the mortal remains of the 39 Indians killed by the ISIS.

(xxvii) Upon return to India, the mortal remains of 39 persons from Punjab and 4 persons from Himachal Pradesh were handed over by the Minister of State to the local authorities at Amritsar. The Minister of State for External Affairs then extended his

journey to Kolkata to hand over the mortal remains of two persons to the State Authorities of West Bengal and then proceeded to Patna to hand over the remains of 5 persons to the State Authorities of Bihar.

(xxxii) So far as the 39th Indian is concerned, the DNA sample of Neeraj Kumar Yadav, brother of the hostage Indian worker Raju Kumar Yadav matched the mortal remains of the 39th body exhumed from the mass grave, leading to the identification of that body as being that of Sh. Raju Kumar Yadav. These mortal remains were sent by the Embassy of India, Baghdad by air to the Bihar State Government in Patna on 25th May, 2018 wherefrom they were taken to Siwan, the hometown of Sh. Raju Kumar Yadav the same day.

Government efforts

9. The above narration sets out the extensive efforts made by the Government of India to seek information regarding and to trace out the 39 missing Indian nationals from the official sources in Iraq. Other than their status being informed as “*missing*” by the Iraqi authorities there was no confirmed information regarding their plight.

10. As late as on 6th March, 2017, the Ministry of Foreign Affairs at Iraq had in writing stated that there was “*no confirmed information about the destiny of the killed Indian nationals*”. The same status prevailed on 14th July, 2017 as informed to the Indian Minister of State for External Affairs by the Foreign Minister of Iraq. The uncertainty

regarding the fate of the 39 Indians thus prevailed. There was also reference to rumours that the Indian captives having been shifted to another prison or moved to Syria.

11. The Minister of External Affairs, Government of India has categorically stated that without concrete evidence of the Indian citizens being dead, she would not declare them so.

12. Mr. Manik Dogra, learned counsel for the respondents has emphasised that India does not make the declaration “*missing presumed dead*” about Indian nationals till there is confirmed information regarding this state of affairs.

Looked at from any angle and perspective, this policy of the Government cannot be faulted. Imagine a situation where upon his/her going missing the authorities declared the person dead without confirmation and subsequently the person emerged alive. The action of the authorities would be labelled callous and negligent by persons as the petitioner.

13. Mr. Pracha has carried his submission to ridiculous lengths contending that the burden to prove the workers dead would fall on the External Affairs Minister which has not been discharged. To say the least, this submission in the present case is completely untenable given the extensive efforts to have the bodies exhumed from the mass grave and the elaborate exercise of procuring samples of Indian relatives, dispatching them to the Iraqi experts, ensuring the DNA profiling and matching undertaken by the experts at Iraq.

14. India was entitled to the remains of its own citizens. Upon human remains being discovered in a mound found to be a mass grave, an elaborate exercise of DNA profiling and matching stands undertaken confirming not only that the bodies were of Indian citizens, but their identities established before the bodies have been handed over to the Indian authorities. This has been possible only because of the herculean efforts of the Ministry of External Affairs in India and Iraq as also the sensitivity with which this huge tragedy stands handled by the Indian authorities.

15. The tremendous responsibility shouldered by the Embassy of India, its promptness of the response to the difficult situation has to be commended.

16. The fact that the Minister of State has personally travelled to Iraq even to bring home the mortal remains of the Indian workers and travelled to different States to hand them over is a reflection of the respect for Indian lives.

17. There are other recent instances where Indian caught in violent cross fire have been brought home safely. Indian travellers all over the world must be feeling reassured by the official response that they are cared for and confident as they move across the globe. We are of the view that the attempt to denigrate the Indian effort by the petitioner deserves to be staunchly deprecated.

Public entitlement to more information

18. Mr. Pracha has extensively criticised the efforts made by the Indian Government to secure the safety and well being of the Indian citizens and also to seek information about their whereabouts.

19. Mr. Pracha has emphasised that full details of the entire operation regarding the efforts made by the Government of India should be disclosed. In fact, Mr. Pracha seeks that a proper investigation into the whole matter is required which be carried out by an SIT appointed by this court.

20. This writ petition raises another vital concern. Increasingly, it has been seen that militant organisations are utilising the shield of innocent civil population to pursue illegal objects against national governments. Violence against vulnerable groups as women is being used to subjugate entire communities. Such organisations are also targeting specific groups identified by nationality, castes, religion, ethnicity, etc. Therefore, the taking of hostages of a particular nationality (Indians in the present case) by the militant group has assumed such proportions that it is a matter of national security as well.

21. In ***(2014) 5 SCC 409 Ex-Army men's Protection Services (P) Ltd. v. Union of India***, the Supreme Court has held that “national security is paramount and if the court is satisfied that the issues involved national security, it may relax adherence to even principles of natural justice”.

22. What is “national security” ? Even this was described in para 15 by the Supreme Court as follows :

“15. It is difficult to define in exact terms as to what is “national security”. However, the same would generally include socio-political stability, territorial integrity, economic solidarity and strength, ecological balance, cultural cohesiveness, external peace, etc.”

(Emphasis by us)

23. Is what constitutes the interest of national security a question of law? Are courts permitted to take decisions on such matters? In para 16 of ***Ex-Armymen’s Protection Service (P) Ltd.***, the Supreme Court has held as follows :

*“16. What is in the interest of national security is not a question of law. It is a matter of policy. It is not for the court to decide whether something is in the interest of the State or not. It should be left to the executive. To quote Lord Hoffman in *Secy. of State for Home Deptt. v. Rehman* [(2003) 1 AC 153 : (2001) 3 WLR 877 : (2002) 1 All ER 122 (HL)] : (AC p. 192C) “... [in the matter] of national security is not a question of law. It is a matter of judgment and policy. Under the Constitution of the United Kingdom and most other countries, decisions as to whether something is or is not in the interests of national security are not a matter for judicial decision. They are entrusted to the executive.”*

(Emphasis by us)

24. So far as issues of national security are concerned, in paras 12 to 14 of the ***Ex-Armymen’s Protection Services (P) Ltd. v. Union of India***, the Supreme Court has relied on judgments from England dealing with the issue of the parameters within which principles of natural justice would apply. The enunciation of law on this very issue in England, may usefully be extracted and reads thus :

“... The decision on whether the requirements of national security outweigh the duty of fairness in any particular case is for the Government and not for the courts; the Government alone has access to the necessary information, and in any event the judicial process is unsuitable for reaching decisions on national security. But if the decision is successfully challenged, on the ground that it has been reached by a process which is unfair, then the Government is under an obligation to produce evidence that the decision was in fact based on grounds of national security.”

(Emphasis by us)

25. In para 17, the Supreme Court has categorically laid down the duty of the court when concerned with a situation of national security and a demand for observance of principles of natural justice, in the following terms :

“17. Thus, in a situation of national security, a party cannot insist for the strict observance of the principles of natural justice. In such cases, it is the duty of the court to read into and provide for statutory exclusion, if not expressly provided in the rules governing the field. Depending on the facts of the particular case, it will however be open to the court to satisfy itself whether there were justifiable facts, and in that regard, the court is entitled to call for the files and see whether it is a case where the interest of national security is involved. Once the State is of the stand that the issue involves national security, the court shall not disclose the reasons to the affected party.”

(Emphasis by us)

26. Clearly there is no right or justification for seeking divulgence of more information by the petitioner. No such order is legally permissible.

27. The present case raises a critical issue regarding the appropriateness of court intervention on a matter involving interplay and interaction of the Indian authorities with a foreign government, simply put, regarding issues of foreign diplomacy.

28. On an attempt seeking divulgence of information which would involve diplomatic efforts, in the pronouncement at ***AIR 1993 SC 1769 R.K. Jain v. Union of India***, the Supreme Court had pronounced as follows :

*“56.... At the cost of repetition it is reiterated that **information relating to national security, diplomatic relations, internal security or sensitive diplomatic correspondence per se are class documents and that public interest demands total immunity from disclosure. Even the slightest divulgence would endanger the lives of the personnel engaged in the services etc. The maxim *Salus Popules Cast Suprema Lax* which means that **regard for public welfare is the highest law, is the basic postulate for this immunity....”*****

(Emphasis by us)

29. The prayer made in the writ petition for public disclosure of more information than disclosed relating to the efforts of the Government would require divulgence of the identity of Indian and foreign under cover assets abroad, endangering their lives and, possibly, seriously compromising national security as well. The same has to be rejected.

30. Given the nature of the considerations involved and the disclosures as noted above, we are of the view that principles of natural justice would have no application to the present case and the prayer for

investigation and further disclosure by the petitioner is completely misconceived and has to be rejected.

Constitution of a Special Investigation Team

31. So far as the prayer for constitution of a special investigation team (SIT) is concerned, 39 Indian citizens were taken hostage on foreign soil in Mosul, Iraq by the ISIS. They were killed by the captivators and buried in a mass grave in Village Badush.’’

32. Mr. Pracha has relied on the pronouncement of the Supreme Court in *(2011) 8 SCC 1 Ram Jethmalani & Ors. v. Union of India & Ors.* to contend that the respondents have to investigate and provide information of when, where, why and who was responsible for the killings; the motive for the killings, whether they were for ransom or whether a conspiracy was hatched in India. The petitioner has placed reliance on the SIT in this judicial precedent which was constituted for the purposes of investigation into the allegations relating to incidents of black money and unaccounted money in the Indian economy generated within India but illegally secreted away in foreign banks in foreign countries; that those funds were thereafter laundered and brought back into India to be used both in legal and illegal activities; that such transfer of funds across borders had very serious connotations for the security and integrity of India.

33. It is evident from the nature of the consideration before the Supreme Court, showed, that the material evidence relating to the

wrong doings was generated from Indian soil and the transactions also ended on Indian soil, thereby permitting investigation by Indian entities.

34. So far as the incidents of the thirty nine Indians being taken into captivity and their killings are concerned, the same has happened completely on Iraqi soil. Issuance of letters rogatory to Iraqi officials under Section 166A of the CrPC, as suggested by Mr. Pracha would be of no consequence at all. The submissions and prayer to this extent by the petitioner are completely misconceived.

Criticism of the official efforts

35. Mr. Mehmood Pracha, the petitioner in person has extensively urged that there were millions of mounds in Iraq and that the statement regarding the mound at Village Badush containing remains of the Indian workers is completely unbelievable.

36. This submission is based on no material at all. The circumstances in which the mound at Village Badush was discovered and the same established as a mass grave have been explained by the Minister for External Affairs in her statement on 20th March, 2018. In the statement at page 2, there is no reference to millions of mounds as has been urged by Mr. Pracha but a clear reference to “*a mound in a distant village*”. The statement made on 20th March, 2018 discloses the request made by the Minister of State to the Iraqi authorities to use the deep penetration radar till the bottom of the mound whereupon the existence of bodies at the bottom of the mound was revealed. The

mound was dug up at the request of General (Retd.) V.K. Singh, the Minister of State and the bodies exhumed.

This statement was made by the Minister on the floor of the Rajya Sabha.

37. The above narration shows that upon deterioration of the security situation in Iraq, travel advisory stands issued to Indian nationals, 24x7 helpline and dedicated control rooms were set up by both the Embassy in Iraq as well as the Ministry of External Affairs to assist the Indian nationals in Iraq as well as their family members in India. As enumerated above, the Minister of External Affairs, Government of India met the family members of the missing Indians at least thirteen times.

38. The Minister of State for External Affairs of the Government of India has personally travelled to Iraq on at least four occasions. Even the mortal remains of the Indian citizens were brought back personally by the Minister of State.

39. We may also note the contention in the writ petition and the oral submissions made before us not only criticise diplomatic efforts of the Ministry of External Affairs but also cast aspersion on the efforts made by a foreign power in ensuring the safety of Indian citizens on it soil and to secure their lives when they were taken hostages. The nature of information of which the writ petitioner seeks knowledge and divulgence includes what could be covert operations using undercover

assistance. If their identity was revealed, the safety of such facilitators would be certainly be imperilled.

40. We also find that the criticism by the petitioner is unfounded and completely unwarranted. Such criticism would compromise our diplomatic relations with the country on whose soil the incident occurred. The same may also jeopardise the present as well as future endeavours to secure hostages on foreign soils as well as other covert operations. We are of the view that some responsibility, concern and sensitivity with regard to the impact of doing so is essential when filing writ petitions on such incidents is sensitive concerned.

We find no reason at all to disbelieve the clear statement on the floor of the House and the fair disclosure by the Indian authorities.

41. It is extremely material that not a single family member of any of the deceased persons has come forward to criticise the Government, fault its efforts or doubt the statement of the Minister or file any petition.

42. Judicial notice can be taken of the world wide efforts to bring militant organisations including the ISIS to book.

43. The criticism by the petitioner and his efforts to create a cloud of suspicion is nothing but a malafide attempt to seek publicity in respect of the tragic unfortunate incident in which 39 Indians were taken hostage by the ISIS and thereafter killed.

Writ petition is based on no material

44. In the instant case, other than a bare reference to some newspaper reports and the submissions that the petitioner nurtures “*reasonable suspicion as to such failure having been deliberate.*” There is not a whisper of detail or material placed before this court which would merit that the writ petition be not entertained in public interest.

45. In para 4 of the pronouncement in **(2004) 3 SCC 363 B. Singh (Dr.) v. Union of India**, the Supreme Court has categorically held that so far as the nature of material concrete and credible basis of filing a writ petition is concerned, “*there must be real and genuine public interest involved in the litigation and **concrete or credible basis** for maintaining a cause before court and not merely an adventure of a 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. The credibility of such claims or litigations should be adjudged on the creditworthiness of the materials averred and not even on the credentials claimed of the person moving the courts in such cases.*”

46. Clearly the writ petition based on no credible material at all is devoid of legal merit and has to be rejected outright.

Submissions on official requests regarding the caskets/coffins

47. Extensive submissions have been made by Mr. Pracha that the request by the Indian Government to the relatives of the deceased not to open the caskets/coffins establishes that there is no evidence that the mortal remains of the Indian workers have actually been brought to India. We are absolutely appalled by the insensitivity of the petitioner in making this submission. Even the petitioner does not dispute that the Indian workers were taken into captive after the 9th of June, 2014. There is no material at all forthcoming as to the date on which these unfortunate Indian workers were killed by the ISIS.

48. The respondents have disclosed that the human remains were discovered in a mass grave. The respondents have disclosed that the deep penetration radar was utilised on the request of the Indian Minister of State when human remains were traced out at the bottom of the mound.

49. It needs no elaboration that they were exhumed only in December, 2017 i.e. almost 3½ years after the Indian workers were taken hostage after what could be days or weeks or months or even up to 3½ years of such burial. Judicial notice can be taken with regard to the state of the decomposition of the human remains put together in a mass grave and buried under soil for an indefinite period of time.

Clearly it would be extremely traumatic for a relative to see the mortal remains of a near and dear one in such a condition.

Whether the present writ petition ought to be entertained as a Public Interest Litigation?

50. In the light of the above narration, it is essential to remind the petitioner on parameters of what constitutes a petition in public interest? It is also necessary to examine as to whether every petition so filed, has to be entertained by the court? It is well settled that public interest litigation is usually entertained by the court for the purposes of “*redressing public injury, enforcing public duty, protecting social rights and vindicating public interest.*” The real purpose of entertaining such application is the vindication of the rule of law, effective access to justice to the economically weaker class and meaningful realisation of the fundamental rights. The directions and commands issued by the courts of law in a public interest litigation are for the betterment of the society at large and not for benefiting any individual. (Ref. (1999) 6 SCC 552 *Malik Bros. v. Narendra Dadhich*)

51. It has been stated by the Supreme Court in (1987) 2 SCC 295 *Sachidanand Pandey v. State of W.B.*, in para 61, as follows :

“61. It is only when courts are apprised of gross violation of fundamental rights by a group or a class action or when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the courts, especially this Court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the underdog and the neglected.”

(Emphasis by us)

The present petition fails on the above standards.

Locus to file the writ petition

52. We may also notice the principles governing *locus standi* to file PILs. As back as in the year 1981, in ***AIR 1982 SC 149 S.P. Gupta v. Union of India***, the Supreme Court had unequivocally declared that ‘*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.*’ In para 24, the Supreme Court has further held as follows :

“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.”

53. The Supreme Court of India has repeatedly expounded on the imminent need to weed out interlopers who file motivated PILs and impose a burden on precious and arguably limited, judicial resources. In the judgment reported at ***(2004) 3 SCC 363 B. Singh (Dr.) v. Union of India***, Arijit Pasayat, J held thus :

“4. When there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes or vendetta to bring to terms a person, not of one's liking, or gain publicity or a facade for blackmail, the said petition has to be thrown out. Before we grapple with the issues involved in the present case, we feel it necessary to consider the issue regarding the “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.....”.

(Emphasis by us)

54. The Supreme Court has unequivocally declared in para 109 of **(1992) 4 SCC 305 Janata Dal v. H.S. Chowdhary** as follows :

“109. It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have a 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.”

(Emphasis supplied)

55. So, how are misconceived petitions, couched as public interest litigation, to be treated?

In the pronouncement of the Supreme Court reported at **(1992) 4 SCC 305 Janata Dal v. H.S. Chowdhary**, the Supreme Court has referred to *“a chain of notable decisions with all the 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 busybody 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.”*

56. So far as the dangerous consequences of improperly initiated petitions couched as PILs are concerned, in para 4 of **B. Singh (Dr.)**, *Pasayat, J* further pointed out as follows :

“...If not properly and strictly regulated at least in certain vital areas or spheres and abuse averted, it becomes also a tool in unscrupulous hands to release vendetta and wreak vengeance, as well as to malign not only an incumbent-to-be in office but demoralise and deter reasonable or sensible and prudent people even agreeing to accept highly sensitive and responsible offices for fear of being brought into disrepute with baseless allegations...”

(Emphasis supplied)

57. In para 12 of **B. Singh (Dr.)**, while cautioning that “*court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind*”, the court further observed as follows :

“12. 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 busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

58. Given the petitioner’s grievance against his offloading, it is evident that the petitioner has a strong private interest in filing the writ petition. Mr. Manik Dogra, learned counsel appearing for the

respondents has contended that the writ petitioner has substantial political interest as well an interest in embarrassing the Government of the day and that the writ petition should not be entertained for any reason.

Conclusions

59. We have extracted from the pronouncements of the Supreme Court in the *Janata Dal v. H.S. Chowdhary* wherein in para 12 of the case the petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs. The present petition is certainly such a petition.

60. The petitioner does not even advert to the elaborate steps taken by the authorities in India and Iraq and the extensive efforts to establish not only that the remains were of Indians but also the identities of the individual bodies. Thereby the petitioner is guilty of concealment of material facts.

61. The kind of submissions made by the petitioner reflects extreme insensitivity to the tragedy which befell the thirty nine Indian workers and the devastation which their surviving dependents and family members would have undergone.

62. This writ petition in our view also is not guided by any motive of public interest. The writ petitioner in the present case also does not satisfy any of the tests, which would render him eligible to institute or maintain the present writ petition.

63. The writ petition which ignores the welfare, interest and sensitivities of dependents and relatives of Indian citizens who were killed after being taken into custody by a militant organisation and the public interest in ensuring healthy international relations and diplomatic ties deserves condemnation in the strongest terms. Such attempts also have to be strongly discouraged.

64. For all of these reasons, the writ petition is dismissed with costs which are quantified at Rs.1,00,000/- . Costs shall be deposited with the *Delhi High Court Advocates Welfare Trust* within four weeks from today.

Dasti to parties.

ACTING CHIEF JUSTICE

C. HARI SHANKAR, J

JUNE 06, 2018/kr