

Reserved on 12.09.2024

Delivered on 18.10.2024

Neutral Citation No. - 2024:AHC-LKO:70107-DB

Court No.09

Case :- WRIT - C No. - 7877 of 2024

Petitioner :- Ashok Pandey

Respondent :- Union Of Bharat Thru. Secy. Ministry Of Law And Justice New Delhi And 3 Others

Counsel for Petitioner :- In Person

Counsel for Respondent :- A.S.G.I.,C.S.C.

Hon'ble Mrs. Sangeeta Chandra,J.

Hon'ble Brij Raj Singh,J.

1. We have heard the petitioner in person. This petition has been filed praying for a mandamus to be issued to the respondents to consider and decide the representation made by the petitioner dated 10.06.2024 through which 10% of the value of recovery made from Yadav Singh and others has been claimed by the petitioner. It is the case of the petitioner, who is a lawyer that being a public spirited citizen and having filed several petitions in public interest, he ordinarily appears in them *pro bono* and doesn't charge any fees from the person who approaches him to file some Public Interest Litigation (hereinafter referred to as "P.I.L."). During the course of his practice as an advocate, the petitioner has filed hundreds of cases in public interest and in many matters positive orders have been passed and some cases have been dismissed with costs. The dismissal of some matters with costs has made the petitioner realize the defects in Judicial/Administrative system where

persons filing P.I.Ls. are punished when the issue raised by them does not find favour with the Court but are not rewarded in any manner when they file a P.I.L. as a result of which the State Exchequer or the State Authorities are benefited. Once P.I.L. is recognized as one of the means to approach the Court for justice to the people and for punishing the guilty, it is the duty of the State which includes the Union to provide for the benefits which a person would be entitled, in case any petition filed by him before any Court of law, benefits the State or its functionaries. This is necessary more so because filing of P.I.L. is a risky work. A P.I.L. petitioner always has to face a risk to his life and wherever there is a risk, there must be some gain otherwise it will be unreasonable, unjust and improper and hence violative of Article 14 of the Constitution. In case the Court directs the Government of India to frame a policy to reward persons who have come forward for filing Public Interest Litigation to bring misconduct of officers on record, thousands of people will come forward even on the risk of their life and liberty, and spend their hard earned money in filing Public Interest Litigation, to punish such looters, cheaters, and gamblers. Ordinary people will come forward because in case of their success, they will get something from the State.

2. It has been stated that in 2014, the petitioner had filed and argued a P.I.L. on behalf of social activist Dr. Nutan Thakur, namely Writ Petition No. 12396 (MB) of 2014 with a prayer to order a CBI enquiry against NOIDA

Chief Engineer, Yadav Singh. The petition was allowed on 16.07.2015, directing the CBI to conduct an enquiry against Yadav Singh, Chief Engineer for NOIDA, Greater NOIDA and Yamuna Expressway Authority. As a result of the CBI enquiry raids were conducted on the houses and offices of Yadav Singh and his relatives and properties worth several crores of rupees were recovered. The petitioner has made an application to the President of India claiming 10% of the total value of cash and properties recovered from Yadav Singh and other accused persons. Such application has remained undecided.

3. We have gone through the annexures to the Writ petition. Annexure no.2 is the representation made by the petitioner on 10.06.2024 to the President of India and also to the Prime Minister regarding payment of 10% of total amount recovered from Yadav Singh, Chief Engineer of Noida, on the basis of filing Writ Petition No. 12396 (MB) of 2014 decided on 16.07.2015, on behalf of social activist Dr. Nutan Thakur, *pro bono*. It is his case that he did not receive any money as fees from the petitioner Dr. Nutan Thakur, whereas lawyers representing the State Government and NOIDA in the High Court and in the Supreme Court received lakhs of rupees in payment as fees. The assessment done by the Income Tax Department in raids conducted on Yadav Singh and his relatives reveal that a total amount of about Rupees 900 crores were looted by Yadav Singh and his relatives. The Government has got around a thousand crore rupees as a result of the Writ Petition

having been filed by the petitioner *pro bono*. The request made in the representation is for the President of India and the Prime Minister to enquire as to how much money and property was recovered from Yadav Singh by the CBI, the Enforcement Directorate, Income Tax Department, and other departments of the Government and pay at least 10% of the total amount to the petitioner out of which he would in turn pay half to Dr. Nutan Thakur.

4. It is the contention of the petitioner that he has filed around two hundred P.I.Ls. along with Dr. Nutan Thakur, where in many of them positive orders have been passed, benefiting the State, but the law being insensitive to the activists coming to Court in public interest, spending their own money and energy, does not provide for any reward. If such work is recognised and rewarded thousands of persons would come forward to file petitions in public interest, even at the risk of their own life as well as the life of their family members. The Government must provide incentive to such persons.

5. It has been stated by Sri Pandey that he is making such prayer as he had filed the Writ Petition on behalf of Dr. Nutan Thakur without taking any fees, and in case this P.I.L. would not have been filed and argued by him, there was no occasion for the High Court to order CBI enquiry against Yadav Singh. If the CBI enquiry would not have been conducted, cash and properties worth hundreds of crores would not have been recovered from

the accused. Except for the petitioner and his client, everyone connected with the case had got sufficient amount of remuneration. The officers of the Registry who processed the petition were paid their salary, the Judges who heard and decided the case were also paid salary and allowances and several other perquisites. The counsel for the Respondents had also been paid fees amounting to several lakhs of rupees. The State not wanting the CBI enquiry had challenged the judgement and order dated 16.07.2015 in Special Leave Petition before the Supreme Court and paid the Senior Advocate Mr. Kapil Sibal, more than Rupees 21 lakhs as fees. Therefore, the petitioner wishes to raise the issue as to whether it is proper that the petitioner and his counsel is not given any fees, expenses, or reward for their role in benefiting the State Exchequer?.

6. It has also been argued that several departments have issued circulars to reward a person whose information has benefited the State Exchequer, for example, the Income Tax Department provides 10% and the Customs Department provides a reward of up to 20% to informers whose concrete information has benefited the department. The Union and the State Governments also give awards to several persons for their different contributions to the public life, but it is a sad state of affairs that P.I.L. activists are only punished and never rewarded.

7. There is another representation dated 23.02.2024 addressed to the President and to the Chief Justice of India, wherein the petitioner has stated that he is an activist and an Advocate and President of Hindu Personal Law Board and Rashtra Raksha Manch and being a public spirited person has filed about two hundred cases in the nature of Public Interest Litigations on different issues relating to interpretation of the Constitution and to prevent violation of the laws. Out of these P.I.Ls. some have been filed by him on his own and some have been filed on behalf of other public spirited persons. The petitioner goes on to state that he had a personal liking towards the then Chief Justice of India Sri Deepak Misra and on account of some unsavory events mentioned in the said representation in detail, a motion for impeachment of the then Chief Justice of India was moved to the Chairman of Rajya Sabha and the petitioner filed a P.I.L. for seeking a direction to the Chairman of the Rajya Sabha not to act upon the motion moved by a Senior Advocate along with others. The events leading to the motion for impeachment being tabled in Rajya Sabha and then having been rejected, have been mentioned in detail and reference has been made by name of several designated Senior Advocates and how the petitioner had filed repeated Writ Petitions praying for initiation of contempt and other proceedings against such persons involved in causing public ridicule of the then Chief Justice of India. It is the petitioner's case that because of his efforts the impeachment motion was dropped. Moreover, the petitioner in paragraph 6 of the said

representation has mentioned how he has always worked as a friend of the Court both in the High Court and in the Supreme Court and has helped many judges of the High Court and the Supreme Court by filing Public interest Litigations to bring to the attention of the authorities, their grievances faced in their respective tenure as Judges, and how these Judges with tears in their eyes have asked him to file petitions to further their causes. Even the then Prime Minister of India had requested him to file petitions to further his cause. In spite of having done so much for the Judiciary and the Country, the petitioner is facing trouble for reasons best known to the Judges as in all cases which are being filed by him in the Supreme Court heavy cost is being imposed upon him and at present, several lakhs of rupees are due as costs upon him which have been imposed recently, and such costs are being threatened to be recovered from his immovable property. Therefore he is claiming fee and expenses from the Government of India and from the Supreme Court, as it was not the then Chief Justice of India in person but the office of the Chief Justice of India, which was being provided help and support by him and that the total expense that he incurred in filing various petitions to save the office of the Chief Justice of India, in filing and curing the defects and going to the Supreme Court for arguments of the said petitions is around Two Lakh Rupees. He took several flights from Lucknow to Delhi. He had a flat at Gurugram, which was 49 km away from the Supreme Court and for months he had to go to the Supreme Court for removal of defects, and for

making mention before the Court for listing of the cases and for the services done by the petitioner as detailed in the representation, the petitioner was claiming expenses, fees and humiliation costs from the Government of India and from the Supreme Court as it was their duty to come forward and help the then Chief Justice of India who was under attack. A request has been made at the end of such representation that looking into his financial condition which was not good and in all likelihood of his being unable to pay lakhs of rupees in costs that have been imposed by the Supreme Court in four matters against him, his ancestral properties may be auctioned and he may be arrested, he may be paid rupees one crore as fees and expenses for drafting the five matters, filing and arguing them relating to the then Chief Justice of India. Since he was in urgent need of money as in many matters he had to deposit several lakhs of rupees as costs, the decision should be taken on his application as soon as possible, otherwise, he would have no option but to file an appropriate petition for recovery of his money.

8. It is this representation which was forwarded by the President's Secretariat on 01.04.2024 to the Ministry of Law and Justice. The Ministry of Law and Justice rejected the representation on 26.07.2024. A copy of the letter informing the petitioner has been filed as Annexure 4 to the petition. In the said communication, it has been stated that the Government of India has an extensive panel of Advocates at the Supreme Court to represent

the Government's interest and that the petitioner is not included in the panel of the department. It was clear that the cases for which fee amounting to Rupees One Crore had been claimed by him were filed by the petitioner on his own volition and the government did not request the petitioner to file such cases. Consequently, the Government of India was not liable to defray any expenses incurred by the petitioner, including the fees claimed by him in purported institution of P.I.Ls. for defence of the former Chief Justice of India.

9. When this Court put a specific query to the petitioner in person regarding his right to get his representation decided in a particular manner, he has stated that after he received rejection letter of the Law Ministry, he again approached the Hon'ble President of India whose Secretariat has referred the matter for payment again to the Ministry of Law and Justice as is revealed from the communication received by the petitioner from the President's Secretariat on 20.08.2024. It is evident from the communication that the President of India instead of discarding the representation of the petitioner, has entertained the same and asked for comments from the Ministry concerned, even after the Law Ministry has rejected the representation of the petitioner on 26.07.2024. It has been argued that it is evident that since the matter of payment for filing cases to save Hon'ble the Chief Justice of India Sri Dipak Misra is under consideration before the authorities, the representation made by the petitioner on

10.06.2024 for payment of 10% of the amount recovered from Yadav Singh and other accused persons, as a consequence of CBI enquiry instituted by the Court in P.I.L. filed by the petitioner on behalf of Dr. Nutan Thakur; should also be directed to be considered positively.

10. The petitioner in person has repeatedly used the word *pro bono* to emphasize his large heartedness and his social activism. *Pro bono* is a Latin phrase that means “for the public good”. It is often used in the legal profession to describe the practice of providing free or low cost legal services to people and organizations that cannot afford legal help. It is mostly used while rendering professional service on a voluntary basis and relates to work that is done without asking for payment. In the case of the petitioner when he filed and argued Public Interest Litigations he did so purportedly with no motive for personal gain.

11. However, now the petitioner wishes to get remuneration for work which he voluntarily performed without request, either from the then Chief Justice of India, or from the then President of India. When the Ministry of Law and Justice rejected his application on valid grounds, he did not proceed to challenge such rejection. Instead, he made another representation to the President of India, pointing out that the President of India would have lost prestige and reputation, and would have suffered humiliation had the Commonwealth Games been

inaugurated by Prince Charles of England, and it was he who filed P.I.L. to save the honour of the President of India. When his magnanimity and legal acumen failed to be noticed by the Ministry of Law and Justice and the President's Secretariat, he had sent a representation dated 10.06.2024, this time threatening the President of India, the Prime Minister of India, the Secretary, Ministry of Finance, the Chief Minister of U.P. and the Chief Secretary, Government of U.P., with legal action for recovery of dues/fees in case they failed to give in to his demand for a share of the property discovered to have been amassed through misappropriation by an allegedly corrupt Government servant. The petitioner is asking this Court to issue a writ in the nature of mandamus to the respondent *i.e.* the Secretary, Ministry of Law & Justice, Government of India and the Secretary, Ministry of Finance amongst others to decide the petitioner's representation dated 10.06.2024 in a particular manner.

12. "Mandamus" is a Latin word, which literally means a command or an order which directs a person or authority to whom it is addressed to perform a public duty imposed on him or on it. The first reported case of issuance of a writ in the nature of "mandamus" in Indian context is of 1775 in **R. V. Warren Hastings (1775), 1 ID (05) 1005**, where a Mandamus was sought against the Supreme Council of the Governor General. After the commencement of the Constitution, the Supreme Court has been empowered under Article 32 to issue a Writ of Mandamus for the enforcement of Fundamental Rights

while every High Court has the power to issue a writ of mandamus under Article 226 for enforcement of Fundamental Rights and also for “any other purpose”, throughout the territories in relation to which it exercises jurisdiction. A writ in the nature of mandamus is an extraordinary remedy. It is not a writ to be issued as of right. It is intended to supply a deficiency in law and is thus a discretionary remedy. A Court may refuse to issue mandamus unless it is shown that there is clear right of the applicant or a statutory or common law duty of the respondent, and there is no alternative remedy available to the applicant. Like any other discretion however, discretion to issue a writ in the nature of mandamus must also be exercised fairly, reasonably and on well established legal principles, being an order issued by a Superior Court to a public authority, asking it to perform a public duty imposed upon it by the Constitution or by any other law. It may also be issued to a public authority to do or to refrain from doing some specific act, which that body is obliged under law to do or refrain from doing, as the case may be, and which is in the nature of a public duty and in certain cases of a statutory duty. It seeks to protect the rights of a citizen by requiring enforcement and fulfilment of imperative duty created by Law. It thus promotes justice. It should therefore be used at all occasions where the law has conferred a right, but has created no specific remedy.

13. A writ petition under Article 226 of the Constitution of India for issuance of mandamus to the authorities was

held to be maintainable for enforcing a statutory or legal right or when there was a complaint by the petitioner that there was a breach of statutory duty on the part of the respondent. It was held that, there must be a judicially enforceable right for the enforcement of which writ jurisdiction can be resorted to. A Superior Court can enforce the performance of a statutory duty by public bodies through its writ jurisdiction at the behest of a person, provided such person satisfies the Court that he has a legal right to insist on such performance. The existence of the said right is the condition precedent to invoke jurisdiction. The settled position in law has been reiterated time and again by the Supreme Court since ***Calcutta Gas Company v. State of West Bengal*, AIR 1962 SC 1044** and ***Mani Subrat Jain v. State of Haryana and others*, AIR 1977 SC 276**.

14. The Supreme Court in many of its decisions has referred to the “modus of representation”. It starts with a litigant making a representation to an Administrative Authority and then filing a writ petition seeking a direction to such authority to consider and dispose of such representation. The High Courts routinely allow or dispose of such petitions without examining the matter on merits, with a direction to “consider”. If the representation is considered and rejected, a fresh cause of action arises to file another writ petition. Every representation to the Government may not be replied on merits. Representations relating to matters of policy may be kept unanswered by the officers as there is no

declared policy framed as yet regarding the claim made by the petitioner. When a direction is issued by a Court to consider or deal with the representation, usually the person who has been so directed examines the matter on merits being under the impression that failure to do so may amount to disobedience. Therefore, a Superior Court before directing "Consideration" of a representation should examine whether the claim is with respect to any enforceable statutory right. If it is not with reference to a Fundamental or statutory right, the Court should put an end to the matter and should not direct "Consideration".

15. Also, it is settled position in law that neither the Court can legislate nor it can issue directions to the Parliament to legislate a law in a particular manner or to frame a policy where there is none, as it would amount to indirectly trenching into the domain of the Legislature or the Executive. The Courts cannot usurp the functions assigned to the Executive under the Constitution and cannot even indirectly require the Executive to exercise its jurisdiction and to frame a policy in a particular manner. There may be times when the Court feels it necessary to issue directions in Public Interest Litigation for the Executive to act in a particular manner, till framing of policy or till legislation is enacted by the competent legislature, for example, the Supreme Court issued directions in the case of *Vishakha v. State of Rajasthan*, 1997 (6) SCC 241; framing guidelines regarding ways to prevent sexual harassment of women at work places. However, this petition has not been filed

15

as a P.I.L. It has been filed by the petitioner and argued in person to advance his personal monetary interest. Hence, no mandamus as prayed for by the petitioner can be issued even for a direction to the respondent to decide the representation of the petitioner dated 10.06.2024, the writ petition stands ***dismissed.***

[Justice Brij Raj Singh] [Justice Sangeeta Chandra]

Order Date :-18/10/2024
Rahul/-