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IN THE HIGH COURT OF ORISSA AT CUTTACK
I.A. No. 12110 of 2022 in/and W.P.(C) PIL No.1416 of 2021

Neelakantha Tripathy & Others *Petitioners*
None

-versus-

Union of India & Others *Opposite Parties*
Mr. Ashok Kumar Parija, Advocate General
assisted by Mr. Debakanta Mohanty, AGA

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

ORDER
22.09.2022

Order No.

05. This matter is taken up by virtual/physical mode.

1. Alleging illegal mining and transportation of iron ore and other minerals causing loss to the public exchequer, the Petitioners claiming themselves to be permanent residents of Keonjhar District, filed the writ petition in the nature of public interest litigation seeking for a direction to the Opposite Party No.1 to 10 (Union of India and State of Odisha) to take legal action against the Private Opposite Parties (Opposite Party Nos.11 to 18).
2. The averments contained in the writ petition apparently indicate that this Court is called upon to conduct fishing and roving investigation into alleged illegal mining activities carried on by the private opposite party Nos.11 to 18.

3. This matter was listed on 2nd November, 2021, when Ms. Rajashree Barik, counsel for the Petitioners requested for adjournment.

On the next date of hearing *i.e.*, on 4th August, 2022, Ms. Rajashree Barik, proxy counsel appearing on behalf of Mr. Pramod Kumar Behera, Advocate for the Petitioner prayed for further adjournment on the ground of illness. This Court on the said date has passed the following order:

“ 1. *On behalf of Mr. P. K. Behera, learned counsel for the Petitioner, it is pleaded that he is unwell and, therefore, the petition must be adjourned.*

2. *Mr. Debakanta Mohanty, learned Additional Government Advocate points out that another petition with identical averments and prayers being W.P.(C) No.33158 of 2021 (Ashirbad Pattnaik v. Union of India) was dismissed by this Court by a Division Bench of Justice Jaswant Singh and Dr. Justice S. K. Panigrahi with costs.*

3. *In the circumstances, it is directed that this petition be listed before the Bench of Justice Jaswant Singh on 5th September, 2022.*

Sd-/
(Dr. S. Muralidhar)
Chief Justice
Sd-/
(R.K. Pattanaik)
Judge

”

In view of the above, the matter was listed before this Bench on 5th September, 2022 when Mr. Pramod Kumar Behera, counsel for the Petitioners prayed for further accommodation.

4. When the matter is called today before lunch and post lunch, none appeared for the Petitioners.

5. Mr. Ashok Kumar Parija, learned Advocate General assisted by Mr. Debakanta Mohanty, Additional Government Advocate submitted that an identical writ petition in the nature of Public Interest Litigation was filed by certain other residents of Keonjhar District which was registered as *Ashirbad Pattnaik & Others*. This Court delivered Judgment on 2nd December, 2021 in the case of *Ashirbad Pattnaik & Others Vrs. Union of India & Others, W.P.(C) No. 33158 of 2021*, wherein making remarks about the *bona fides* of the Petitioners and taking note of withdrawal of another identical writ petition bearing W.P.(C)No. 16719 of 2020 (*Rupranjan Panda and Others Vrs. Union of India & Others*) on 21st July, 2020, declined to entertain the writ petition. It is pointed out by Mr. Parija, learned Advocate General that this Court did not stop by simply dismissing the writ petition, but proceeded further by imposing costs in order to discourage filing of the cases of present nature. He pressed Paragraphs 10 & 11 of the said Judgment, which is quoted herein below:

“10. We would have ordinarily observed something against the counsel appearing in the case. However, keeping in view the early stages of his career, we refrain from commenting upon his conduct except to advise him to be careful in future and not be a party to such a litigation initiated by unscrupulous litigants.

The Registry is also directed to stringently comply with the rules as indicated hereinabove while dealing with Public Interest Litigations so as to prevent valuable judicial time from being wasted and prevent certain unscrupulous elements from weaponizing petitions in courts of law.

11. We feel constrained to direct the petitioners (10 in number) to deposit cost of Rs.5,000/- each (totalling

Rs.50,000/-) before the Orissa High Court Bar Association Advocates' Welfare Fund positively within four weeks from today, failing which Collector, Keonjhar shall proceed to recover the same as arrears of land revenue and ensure the deposit of the recovered amount as stated hereabove."

6. It is also brought to the notice of this Court that the said Judgment dated 2nd December, 2021 was assailed before the Hon'ble Supreme Court in SLP(C) No.8637 of 2022, which came to be dismissed on 9th September, 2022 with the following order:

"Permission to file the Special Leave Petition granted.

2 Delay in refiling the Special Leave Petition is condoned.

3 Application for permission to implead the High Court of Orissa is dismissed.

4 Having heard senior counsel appearing on behalf of the petitioners, we see no reason to entertain the Special Leave Petitions. The High Court was entirely justified in coming to the conclusion that the petition was filed after suppressing the fact that an earlier petition filed by the same advocate had been dismissed as withdrawn. The subsequent petition contains substantially the same averments. The Special Leave Petitions are an abuse of process. We accordingly dismiss the Special Leave Petitions with costs quantified at Rs 25,000, which shall be paid to the Supreme Court Bar Association within four weeks.

4 Pending application, if any, stands disposed of."

7. Mr. Ashok Kumar Parija, learned Advocate General submits that the present petition has been filed with similar allegations claiming similar relief but with only the change of the persons as Petitioners, thus pressed not only for dismissal of the present writ petition but also to award exemplary cost in order to deter filing of

vexatious and frivolous petition before this Court in order to avoid wastage of valuable time of the Court.

8. It may be pertinent to take cognizance of the fact that after disposal of the writ petition being *W.P.(C) No. 33158 of 2021 : Ashirbad Pattnaik and Others Vrs. Union of India and Others*, vide *Judgment dated 2nd December, 2021*, applications being I.A. Nos. 18125 of 2021 and 18395 of 2021 were filed seeking modification of said Judgment. This Court while rejecting the said I.As passed the following order on 10th March, 2022:

“2. *The present I.As. have been filled by the petitioners praying for modification of the judgment dated 02.12.2021 passed by this Court in W.P.(C) No.33158 of 2021.*

3. *Learned counsel for the petitioners submits that Paragraph 3 and 10 of the aforementioned judgment dated 02.12.2021 which bears the name of Mr. Sambit Samal, learned Advocate who was appearing on behalf of the petitioners in W.P.(C) No. 33158 of 2021 with a negative connotation which raises doubts on the conduct of the counsel. Thus, Mr. Sambit Samal, learned Advocate represented by the present counsel prays expunging the relevant portions of the aforementioned judgment dated 02.12.2021.*

4. *Heard learned counsel for the petitioners.*

5. *At this juncture, it is apposite to reproduce the relevant portions of judgment dated 02.12.2021 as under:*

“3. *We find from the perusal of the file attached herewith that the same advocate had filed a previous writ petition in the form of Public Interest Litigation being W.P.(C) 16719 of 2020 with different set of petitioners (11 in number) with similar content*

and seeking identical relief sought herein. We find further from the perusal of the file of the earlier similar Public Interest Litigation-W.P.(C) No.16719 of 2020 attached herewith that the allegation/grievance raised in both the petitions are similar in substance. In fact, it is noticed that the advocate in both the petitions is the same i.e. one Mr. Sambit Samal. What has changed is that the earlier set of petitioners have merely been replaced by another set of petitioners and some minor alterations have been made in the pleadings in the subsequent/instant Writ Petition. The aforesaid writ petition got dismissed as withdrawn by this Court vide order dated 21.07.2020.

This Court has to be satisfied about the credentials of the applicant; prima facie correctness or nature of information given by him and the information furnished being not vague and indefinite. But in the present case, we find it to be a mischievous petition seeking to assail with oblique motives which prevents us from invoking our discretionary writ jurisdiction.

xx xx xx

10. *We would have ordinarily observed something against the counsel appearing in the case. However, keeping in view the early stages of his career, we refrain from commenting upon his conduct except to advise him to be careful in future and not be a party to such a litigation initiated by unscrupulous litigants.*

The Registry is also directed to stringently comply with the rules as indicated hereinabove while dealing with Public Interest Litigations so as to prevent valuable judicial time from being wasted and prevent certain unscrupulous elements from weaponizing petitions in courts of law.”

Nowhere, in the entire paragraphs extracted above, there is any mentioning which reflects the petitioners in negative light.

6. The concept of “Public Interest Litigation” was conceived by Hon’ble Justice V.R. Krishna Iyer in *Akhil Bharatiya Soshit Karamchhari Sangh (Rly.) v. Union of India*, (1981) 1 SCC 246, wherein an unregistered association of workers was permitted to institute a writ petition under Article 32 of the Constitution for redressal of their common grievances. Prior to this, the traditional rule of locus standi was that only a person whose right is affected, alone, can file a petition. However, now the Courts permit “Public Interest Litigations” instituted at the instances of public spirited citizens for the enforcement of constitutional legal rights. In various judgments passed by the Apex Court, the issue of PILs was widely considered and PILs have since achieved a place of importance in our legal system. Reference may be made to *Mumbai Kamgar Sabha v. Abdulbhai Faizullabhai* (1976) 3 SCC 832, *M.C. Mehta v. Union of India*, (1986) 2 SCC 176, *Pt. Parmanand Katara v. Union of India*, (1989) 4 SCC 286, *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 and *Javed v. State of Haryana*, (2003) 8 SCC 369.

7. However, with great power also comes great responsibility. As PILs began gaining acceptance, it was observed by Courts that, many unscrupulous litigants started inappropriately using the wide contours of a Public Interest Litigation to approach the Court without having any semblance of public interest at heart. Thereafter, the Hon’ble Supreme Court in *R & M Trust v. Koramangla Residents Vigilance Group*, (2005) 3 SCC 91 laid down some basic questions to be answered at the time of admitting a PIL petition so as to verify the bonafideness of a person, group or organisation. These questions were enumerated as follows:

“(i) Whether the petitioner is bonafide and whether he has/had filed any PIL for any other cause before any competent Court?

(ii) Whether the petition filed sounds of bonafide?

(iii) *No petition was filed earlier for the same cause.*

(iv) *No petition was earlier decided by the Court for the same cause.*

(v) *Whether cause relates to poor and needy persons in general suffering from violation of their fundamental rights?*

(vi) *The petition is not filed for personal gain or private profit or political motive or oblique consideration?*

(vii) *The petition is not vexatious petition under the colour of PIL.*

(viii) *The petition is not filed for vindicating any personal grievance.*

(ix) *The petition is not filed with an intention to abuse process of law.*

(x) *Petitioner is not a proxy of others.*

(xi) *The petition is not filed for extraneous motivation or for glare of publicity.”*

8. *It was the Hon'ble Apex Court's opinion that while genuine and bonafide PIL must be encouraged by all Courts but at the same time, a frivolous PIL which is being filed for extraneous reasons must be discouraged. This has been laid down as the law by the Hon'ble Supreme Court in its seminal judgment in State of Uttaranchal v. Balwant Singh Chaufal, (2010) 3 SCC 402, wherein the following guidelines have been set forth, which are reproduced below:*

“(1) *The courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.*

(2) *Instead of every individual Judge devising his own procedure for dealing with the public interest*

litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the rules prepared by the High Court is sent to the Secretary General of this court immediately thereafter.

(3) The courts should prima facie verify the credentials of the petitioner before entertaining a PIL.

(4) The courts should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The courts should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The courts should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The Courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

(8) The Courts should also ensure that the petitions filed by busy bodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.”

9. As we now advert to the contention of the learned counsel for the petitioners, it must be borne in mind that the accountability of the legal profession

is complex and varied. It transcends and extends beyond the responsibility to the client and the Court.

10. *The legal profession is of vital importance not only to the administration of justice but also for the rule of law and good governance. It was once very aptly remarked by the Hon'ble High Court of Karnataka, lawyers are to the civil society what soldiers are to the frontiers of a nation. Marcus Tullius Cicero centuries ago called this profession as a 'noble profession'. Lawyers lend voice to the voiceless, they stand unfazed during social tumult and it is they who draw the chariot of law and justice.*

11. *A lawyer has a duty to the Court, a duty to his client and a duty to the profession as well. The observations of the Hon'ble Calcutta High Court in Emperor v. Rajanikanta Bose, ILR (1922) 49 Cal 732, are worth reproducing:*

“The practice of the law is not a business open to all who wish to engage in it. It is a personal right or privilege It is in the nature of a franchise from the State. That you are a member of the legal profession is your privilege; that you can represent your client is your privilege; that you can in that capacity claim audience in Court is your privilege. Yours is an exalted profession in which your privilege is your duty and your duty is your privilege. They both coincide”

12. *In a courtroom, neither the view of the author of the judgement nor the pleadings of a counsel are personal. Judicial pronouncements are based on two principles, facts and circumstances of the case and the submissions made by the counsel for both the parties. A remark in the course of such pronouncement pertaining to the counsels only reflects the professional character which is succinctly reflected in the case of R. Muthukrishnan vs The Registrar General of High Court of Judicature at Madras, AIR 2019 SC 849, wherein the Supreme Court observed that :*

“The judgment rendered by a Judge is based upon the dint of hard work and quality of the arguments that are advanced before him by the lawyers. There is no room for arrogance either for a lawyer or for a Judge.”

13. The observations made in Paragraph 3 and 10 of the judgment dated 02.12.2021 in no way affects the image of the arguing counsel. It was only a note of caution sounded to the counsel so that he may not get involved with unscrupulous litigants. It was merely a reminder on the duty of the counsel to the court and to his profession. The court has, in fact, restrained itself from passing any adverse order considering the petitioner's lesser length of practice at the Bar.

14. This court makes it clear that in the absence of any disparaging remark made against the counsel for the petitioners, he should take the observations of this Court in the manner in which it was intended, i.e. as a fillip to mould his legal career in a better way in future.

15. In view of the above, this Court is not inclined to accept the prayer of the petitioners made in the I.As. to effect any change in the judgment dated 02.12.2021 passed by this Court in W.P.(C) No.33158 of 2021.

16. Accordingly, both the I.As. are dismissed.”

9. I.A. No. 12110 of 2022 has been filed by Sri Manoranjan Dixit, one of the petitioners in the present writ petition. Following has been affirmed at paragraph 2 of the affidavit of said I.A. sworn to for himself and on behalf of others:

“2. That there is change of circumstances which were previously not there when the petitioners previous counsel

filed this writ petition and hence, the petitioner's want to withdraw the same with liberty from this Hon'ble Court for filing a better one."

In the prayer the said deponent prayed for the following:

"That, the petitioners therefore prays that the Hon'ble Court may graciously be pleased to allow the interim application (I.A.) for withdrawing the writ petition with liberty to file a better one otherwise the petitioners will be highly prejudiced."

This Court finds that except change of set of the Petitioners posing themselves to be residents of Keonjhar district all other allegations and contents of the writ petition remained almost identical. Persons whose rights are impinged have a right to seek remedy before the court of law. Nevertheless, such a recourse should not be by way of abuse of process of law. When the Court is under heavy workload finding the ways to lessen the weight, vexatious petitions like the present nature particularly when identical matter [*W.P.(C) No. 33158 of 2021 : Ashirbad Pattnaik and Others Vrs. Union of India and Others, vide Judgment dated 2nd December, 2021*] has already stood closed, granting liberty to institute further proceeding would be to deprive genuine cause to be decided promptly and appropriately. Approaching the Court with frivolous cases is required to be dealt with severely & swiftly. It is gainsaid that Public Interest Litigation refers to such legal action which is initiated in a court of law in order to enforce the public interest or general interest in which the common people have some interest by which their legal right or liability is affected. The Hon'ble Supreme Court in the case of *Ardhendu Kumar Das Vrs. State of Odisha, 2022 SCC OnLine SC 718* has observed as follows:

“59. *In the recent past, it is noticed that there is mushroom growth of public interest litigations. However, in many of such petitions, there is no public interest involved at all. The petitions are either publicity interest litigations or personal interest litigation. We highly deprecate practice of filing such frivolous petitions. They are nothing but abuse of process of law. They encroach upon a valuable judicial time which could be otherwise utilized for considering genuine issues. It is high time that such so-called public interest litigations are nipped in the bud so that the developmental activities in the larger public interest are not stalled.*

60. *In the result, the appeals, having been found to be without any substance, are dismissed with costs, quantified at Rs. 1,00,000/- (Rupees one lakh) each, payable by the appellants to the respondent No. 1 within four weeks from the date of this judgment.”*

10. In the present case, while seeking permission to withdraw the writ petition, the petitioners have prayed for liberty to file fresh writ petition particularly when this Court *vide Judgment dated 2nd December, 2021 dismissed W.P.(C) No. 33158 of 2021 : Ashirbad Pattnaik and Others Vrs. Union of India and Others*, which is identical in nature with that of the present case stands already dismissed. Such a liberty if granted would be to invite and encourage unscrupulous busy bodies to approach this Court. Time and again to espouse their own hidden and motivated personal interest so this Court feels it expedient in the interest of justice to impose at least nominal costs to discourage filing of such petitions. Accordingly, the Court directs the 14 petitioners to deposit a sum of Rs.10,000/- per each Petitioner as costs (14 X Rs.10,000/- = Rs.1,40,000/-) with the Orissa High Court Bar Association Advocates' Welfare Fund positively within four weeks from today, failing which the Secretary of the High Court Bar Association

would move an application before the Collector, Keonjhar, who shall proceed to recover the same as arrears of land revenue and ensure deposit of the recovered amount as stated above.

11. In view of the above, the writ petition being W.P.(C) No.1416 of 2021 and I.A. No. 12110 of 2022 are dismissed with costs, as determined here above.

(Jaswant Singh)
Judge

(M.S. Raman)
Judge

Laxmikant

September 22, 2022 Cuttack

