



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

Date of decision: 03rd JULY, 2023

IN THE MATTER OF:

+ **W.P.(C) 10431/2022**

RAJINDER NISCHAL

..... Petitioner

Through: Petitioner in person.

versus

UNION OF INDIA THROUGH ITS SECRETARY & ANR.

..... Respondent

Through: Mr. Chetan Sharma, ASG with Mr. Apoorv Kurup, CGSC, Mr. Amit Gupta and Mr. Ojaswa Pathak, Advs.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The instant Writ Petition under Article 226 of the Constitution of India has been filed by the Petitioner, who is an Advocate. The Petitioner seeks to challenge the method of empanelment of Advocates to represent the Union of India contending that the size of the panel to represent the Government of India is not fixed and the Government does not invite applications for appointment or renewal of the panel and that the appointment of Advocates as Government Counsel is contrary to the law laid down by the Apex Court in State of Punjab v. Brijeshwar Singh Chahal, (2016) 6 SCC 1.

2. At the outset, it is pertinent to mention that the Petitioner himself was an empanelled Government Counsel and at the time of his empanelment also neither there was any fixed panel of Advocates to represent Government of



India nor was the Petitioner subjected to any written examination before his appointment as Government Counsel.

3. The short question which arises for consideration in the present petition is as to whether the Union of India has violated the judgment of the Apex Court in Brijeshwar Singh Chahal (supra) or not. In the said case, the judgment was passed by the Apex Court while hearing a transfer petition and the question that was raised in the Apex Court was as to whether the appointment of law officers by the State Governments can be questioned or the process by which such appointments are made, can be assailed on the ground that the same are arbitrary, hence, violative of the provisions of Article 14 of the Constitution of India. In the said case, the transfer petition was filed for the transfer of a Writ Petition which was challenged by a person who was initially appointed as Assistant Advocate General by order dated 23.04.2002. The appointment was on contractual basis and it was valid till to 31.03.2003, but the same was continued till 31.03.2004 by an order dated 19.07.2003. Thereafter, the Petitioner therein was appointed as Deputy Advocate General in the pay scale of Rs 18,400-22,400/- by order dated 11.01.2008 and his tenure was later extended up to year 2011-2012. It is also pertinent to mention that the law officers in Punjab and Haryana High Court, from where the issue before the Apex Court arose, are entitled to a monthly salary and one of the allegations made by the Petitioner therein was that a number of Law Officers are without work and are only receiving the salary, which, according to the Petitioner therein, was idle salary. Therefore, the challenge before the Apex Court was for a post. In the present case the challenge is for the mode of empanelment of lawyers and not appointment of lawyers to a post.



4. Unlike the case before the Apex Court, in the present case there is no fixed salary. In fact, in the present case even a retainer fee is not paid to the lawyers who are empanelled. The Lawyers empanelled by the Government of India are paid their fee on a case to case basis. As stated earlier, the Petitioner herein has himself been a beneficiary of the process which he is now challenging in the present petition. The judgment of the Apex Court will definitely apply to those States where monthly salary or a retainer fee is paid to the Law Officers and it will not apply to a case where lawyers are being empanelled and are paid on a case to case basis.

5. It seems that the Petitioner, who is an Advocate, has filed the present petition after being a beneficiary of the very same process which has been assailed in the present Writ Petition only because he has been denied extension or reappointment. A litigant can always choose a lawyer to represent him and the Government of India, which is one of the largest litigant in the country, has the freedom to appoint its own lawyers. This Court is of the view that the present petition is nothing but a *Publicity Interest Litigation*.

6. Lamenting on the waste of time caused by the frivolous PILs and the fact that Petitions are being camouflaged as PILs to settle personal scores, the Apex Court in Tehseen Poonawalla v. Union of India, (2018) 6 SCC 72, the Apex Court held as under:

“97. Yet over time, it has been realised that this jurisdiction is capable of being and has been brazenly misutilised by persons with a personal agenda. At one end of that spectrum are those cases where public interest petitions are motivated by a desire to seek publicity. At the other end of the spectrum are petitions which have been instituted at the behest of business or political rivals to settle scores behind the facade of a public interest litigation. The true face of the litigant



behind the façade is seldom unravelled. These concerns are indeed reflected in the judgment of this Court in State of Uttaranchal v. Balwant Singh Chaufal [State of Uttaranchal v. Balwant Singh Chaufal, (2010) 3 SCC 402 : (2010) 2 SCC (Cri) 81 : (2010) 1 SCC (L&S) 807] . Underlining these concerns, this Court held thus : (SCC p. 453, para 143)

“143. Unfortunately, of late, it has been noticed that such an important jurisdiction which has been carefully carved out, created and nurtured with great care and caution by the courts, is being blatantly abused by filing some petitions with oblique motives. We think time has come when genuine and bona fide public interest litigation must be encouraged whereas frivolous public interest litigation should be discouraged. In our considered opinion, we have to protect and preserve this important jurisdiction in the larger interest of the people of this country but we must take effective steps to prevent and cure its abuse on the basis of monetary and non-monetary directions by the courts.”

98. The misuse of public interest litigation is a serious matter of concern for the judicial process. Both this Court and the High Courts are flooded with litigations and are burdened by arrears. Frivolous or motivated petitions, ostensibly invoking the public interest detract from the time and attention which courts must devote to genuine causes. This Court has a long list of pending cases where the personal liberty of citizens is involved. Those who await trial or the resolution of appeals against orders of conviction have a legitimate expectation of early justice. It is a travesty of justice for the resources of the legal system to be consumed by an avalanche of misdirected petitions purportedly filed in the public interest which, upon due scrutiny, are found to promote a personal, business or political agenda. This has spawned an industry of vested



interests in litigation. There is a grave danger that if this state of affairs is allowed to continue, it would seriously denude the efficacy of the judicial system by detracting from the ability of the court to devote its time and resources to cases which legitimately require attention. Worse still, such petitions pose a grave danger to the credibility of the judicial process. This has the propensity of endangering the credibility of other institutions and undermining public faith in democracy and the rule of law. This will happen when the agency of the court is utilised to settle extra-judicial scores. Business rivalries have to be resolved in a competitive market for goods and services. Political rivalries have to be resolved in the great hall of democracy when the electorate votes its representatives in and out of office. Courts resolve disputes about legal rights and entitlements. Courts protect the rule of law. There is a danger that the judicial process will be reduced to a charade, if disputes beyond the ken of legal parameters occupy the judicial space.”

7. Similarly, in B. Singh (Dr.) v. Union of India, (2004) 3 SCC 363, the Apex Court has held as under:

“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”. 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. 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. A person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. These aspects were highlighted by this Court in Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36] and Kazi Lhendup Dorji v. Central Bureau of Investigation [1994 Supp (2) SCC 116 : 1994 SCC (Cri) 873] . A writ petitioner who comes to the court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective. (See Ramjas Foundation v. Union of India [1993 Supp (2) SCC 20 : AIR 1993 SC 852] and K.R. Srinivas v. R.M. Premchand [(1994) 6 SCC 620] .)

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12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity-oriented or founded on personal vendetta. As indicated above, courts must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. 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.”

8. In State of Uttaranchal v. Balwant Singh Chauhal, (2010) 3 SCC 402, the Apex Court, after emphasizing on the importance of PILs, has issued certain directions which are to be considered by a Court before deciding a PIL and the same reads as under:

“178. We must abundantly make it clear that we are not discouraging the public interest litigation in any manner, what we are trying to curb is its misuse and abuse. According to us, this is a very important branch and, in a large number of PIL petitions, significant directions have been given by the courts for improving



ecology and environment, and the directions helped in preservation of forests, wildlife, marine life, etc. etc. It is the bounden duty and obligation of the courts to encourage genuine bona fide PIL petitions and pass directions and orders in the public interest which are in consonance with the Constitution and the laws.

179. The public interest litigation, which has been in existence in our country for more than four decades, has a glorious record. This Court and the High Courts by their judicial creativity and craftsmanship have passed a number of directions in the larger public interest in consonance with the inherent spirits of the Constitution. The conditions of marginalised and vulnerable section of society have significantly improved on account of Courts' directions in PIL.

180. In our considered view, now it has become imperative to streamline the PIL.

181. We have carefully considered the facts of the present case. We have also examined the law declared by this Court and other courts in a number of judgments. In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:

(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 busybodies 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. Public Interest Litigation was conceptualised as a weapon to secure justice for the voiceless. The Apex Court said that Public Interest Litigation has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity-seeking is not lurking.



The attractive brand name of Public Interest Litigation should not be used for suspicious products of mischief and should be aimed at redressal of genuine public harm or public injury. Courts must be careful to see that a member of public who approaches the Court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration.

10. This Court is of the view that no public interest is involved in the present petition and it has been filed only to upset the apple cart.

11. In view of the above, the Writ Petition is dismissed, along with the pending applications, if any.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

JULY 03, 2023

Rahul

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