

Court No. - 10

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Case :- P.I.L. CIVIL No. - 21693 of 2021

Petitioner :- Aditya Mohan Arora

Respondent :- U.O.I.Thru. Secy. Drinking Water & Sanitation & Ors.

Counsel for Petitioner :- Anshuman Singh Rathore

Counsel for Respondent :- C.S.C.,A.S.G.,Samir Om

Hon'ble Devendra Kumar Upadhyaya,J.

Hon'ble Ajai Kumar Srivastava-I,J.

Heard learned counsel for the petitioner, learned State Counsel and Shri Sudeep Kumar along with Sri Samir Om, learned counsel representing the respondent no.3-State Water and Sanitation Mission.

This petition has been filed as a Public Interest Litigation with the following prayers :-

"(i) A writ, order or direction in the nature of mandamus commanding the respondent no.2 and respondent no.3 to produce the relevant records in respect of determination of TPI rates and selection of the Companies in respect of the patent irregularities committed by the respondent no.2 and respondent no.3 in the implementation of the Jal Jeevan Mission (Har Ghar Nal Se Jal) scheme.

(ii) A writ, order or direction in the nature of mandamus commanding the respondent no.4/Comptroller and Auditor General of India or any other suitable independent investigating agency under the control of the Government of India for inquiring into the financial embezzlement committed by the respondents in implementation of the Jal Jeevan Mission (Har Ghar Nal Se Jal) scheme."

It has been stated in the writ petition that the State Water and Sanitation Mission is the executing agency for implementation of Jal Jeevan Mission (Har Ghar Nal Se Jal) which is a scheme evolved for providing drinking water at village level. Further submission in the writ petition is that the State Water and Sanitation Mission while selecting an agency for the work relating to Third Party Inspection (TPI) has chosen an agency which has quoted rates higher than the rates of U.P. Jal Nigam for the said purpose. It has also been stated that U.P. Jal Nigam is a Statutory Corporation and there was no reason why the work relating to Third Party Inspection could not have been awarded to a State Agency, namely U.P. Jal Nigam instead of

awarding the same to a private agency, that too on rates quoted higher than the rates of Jal Nigam.

In the writ petition, an averment has been made that the work relating to Third Party Inspection is, thus, being carried out by a private agency on escalated rates as the rates quoted by the private agencies in the tender process were much higher than the prevailing rates of U.P. Jal Nigam. It has also been stated that the Third Party Inspection rates in the State of U.P. has been fixed to be 1.33% whereas the same prevalent in the State of Tamil Nadu is 0.15%, in the State of Kerala, it is 0.4% and thus the rates on which the work relating to Third Party Inspection is being taken in the State of U.P. are higher which amounts to misuse of government grant/funds. Certain other allegations have also been made in the writ petition, such as adopting pick and choose method for awarding the work and further that award of the said work is de hors the operational guidelines as formulated by the Government of India.

The petitioner has also stated that because of mala fide intention of the officials and for personal gains the work relating to supply of pipes has been awarded to a company which has been debarred/blacklisted by many States of the country for its sub-standard quality and deficient services. Another submission made in the writ petition is that the entire tender process by the respondent no.3 was carried out without consulting U.P. Jal Nigam and since U.P. Jal Nigam, in such matters is the main operating State Agency, the work ought to have been awarded to it instead of empanelling any other construction agency.

Learned counsel for the petitioner has also drawn attention of this Court to the letter dated 04.09.2021 which contains reply from the Public Information Officer of respondent no.3 and according to the learned counsel for the petitioner, the reply contained in the said letter to the information sought/queries made are all evasive, which according to learned counsel for the petitioner, clearly reveals that the entire process adopted by respondent no.3 has been opaque and, thus, lacks the requisite transparency and fairness.

The petition has been opposed by the learned State Counsel as also learned counsel representing the State Water and Sanitation Mission stating that this petition is motivated, misconceived and does not contain any material so as to even point out any irregularity in the award of tender for the work in question.

Learned counsel for the respondent no.3 has drawn attention of this Court to Annexure No.5 which are screenshots of certain tweets made by a leader of political party and has, thus,

submitted that the petition has not been filed with bona fide intention, rather this is politically motivated and, as such it need not be entertained by this Court. It has also been stated that all the misgivings in the mind of the petitioner get removed by the reply given to the petitioner by the Executive Director of the respondent no.3 vide his letter dated 10.09.2021. Thus, the submission is that this petition is liable to be dismissed.

We have considered the submissions made by learned counsel representing the respective parties and have also perused the record available before us.

Before proceeding to examine any other averment made in the writ petition, we need to assure ourselves that this petition has been filed with bona fide intention and is not a motivated petition or a camouflage to serve the interest of any person other than public at large. There cannot any dispute that the public authorities (which will include State Water and Sanitation Mission as well) has to act in the most transparent, fair and lawful manner and such agency cannot be permitted to be lax in observing the law. It is also not in dispute that in case any irregularity or illegality is found being committed by such agency, specially the financial irregularities which ultimately touches upon interest of every individual tax payer in the society, such issues need to be probe to be followed by appropriate permissible legal action. However, for satisfying this Court to order for any such probe any public interest litigation should contain adequate and credible material and also the person files such public interest litigation should have bona fide intention, rather than being impelled by some mala fides.

The petitioner in the writ petition has stated that he is a resident of Lucknow and is presently engaged in business. He further stated that he has adequate knowledge of functioning of the State Government as well as National Jal Jeevan Mission and the guidelines formulated therein. The petitioner further states that he is a income tax payee and does not have any personal interest in the matter in issue in the present writ petition. The said averments have been made as per the requirement of Rule 3A Chapter 22 of Allahabad High Court Rules, 1952 which was framed in compliance of the judgment rendered by Hon'ble Supreme Court in the case of **State of Uttaranchal vs. Balwant Singh Chaufal and others**, reported in (2010) 3 SCC 402.

On being queried as to what business the petitioner is doing, learned counsel for the petitioner has stated that the petitioner is in real estate and construction business. A further query was put

to learned counsel for the petitioner as to how and in what capacity did he seek information under the Right To Information Act vide his application dated 31.08.2021 in respect of some complaints made by a political figure mentioned therein whose tweets have also been relied upon having been annexed as Annexure No.5 to the writ petition, no satisfactory reply could come forth except that the petitioner was well within his right to seek any information under the Right to Information Act.

While entertaining a Public Interest Litigation this Court on one hand cannot be so as entertain a real public cause being espoused. However, the Court has to be simultaneously very introspect in entertaining such petition if it is found that the actual purpose of the petition is other than public interest, such as seeking publicity, serving someone else's interest for the petition having been filed not with bona fide intention etc.

Reliance placed that the petitioner on the tweets of a political party which have been annexed as Annexure No.5 to the writ petition and the queries made under the Right to Information Act relating to the complaints made by the said political figure and also the fact that the petitioner himself is in real estate/construction business do not convince us to arrive at a conclusion that the petition has been filed for bona fide reasons. Even otherwise all the confusions/uncertainties, which have been described by learned counsel for respondent no.3 as misgivings, stand removed by the contents of letter dated 10.09.2021 which has been written by the Executive Director of respondent no.3 to the petitioner. By the said letter, the petitioner's representation/application dated 06.09.2021 has been replied and each and every point raised in the said application has been considered and adequate reply has been provided. From the said reply as also from the submissions made by learned counsel representing the respondent no.2 what we find is that any work by the respondent no.3 need not be necessarily executed by U.P. Jal Nigam even if it is a statutory corporation. The respondents in their wisdom took a policy decision with the concurrence of the cabinet of the State Government to get the works executed in Engineering Procurement and Construction (EPC) Mode by open competitive bidding. Such policy decision cannot be faulted with for the reason that it exclusively lies in the realm of policy.

We also notice that the selection, as stated by the Executive Director of respondent no.3 in his letter dated 10.09.2021, of the agency for executing the work has been done in terms of the guidelines/rules contained in the Procurement manual. The said letter also categorically states that even the rates which

have been approved as quoted by the agencies are lower than the rate of U.P. Jal Nigam and that the agency for Third Party Inspection work has been chosen by adhering to open competitive bidding process from amongst the eligible tenderers.

The reply given to the petitioner by the Executive Director of respondent no.3 vide his letter dated 10.09.2021 does not leave any scope for interference by us in this Public Interest Litigation. What we have noticed is that insistence of the petitioner in this case is that the work of respondent no.3 ought to have been allocated to the U.P. Jal Nigam which is a government agency.

If there is a policy shift and appropriate decision in this regard has been taken by the cabinet of the State Government which is not in contravention of any law, statutory or otherwise, any interference in said policy decision would not be permissible by this Court.

Such petitions cause loss of precious judicial time which can be devoted by the courts and all concerned for disposal of long pending cases. In this regard, reference may be made to the observation made by Hon'ble Supreme Court in the case of **Holicow Pictures (PPrivate) Limited vs. Prem Chandra Mishra and others** reported in (2007) 14 SCC 281 which is extracted herein below :

"11. In subsequent paras of the said judgment, it was observed as follows: (SCC p. 348, para 109)

'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.'

12. It is depressing to note that on account of such trumpety proceedings initiated before the courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose

grievances go unnoticed, unrepresented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters—government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorised collection of tax amounts are locked up, detenu expecting their release from the detention orders, etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the courts and having their grievances redressed, the busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity, break the queue muffling their faces by wearing the mask of public interest litigation and get into the courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the courts and as a result of which the queue standing outside the doors of the courts never moves, which piquant situation creates frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system.

For the reasons aforesaid, we are not inclined to entertain this writ petition, which is hereby **dismissed**.

Order Date :- 24.9.2021

Mahesh