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IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(PIL) No.1944 of 2021

Rajan Kumar Singh, Aged about 34 years s/o Manjusha Singh, R/o
Q.No. CD-611, Sector-II, HEC Colony, P.O.-Dhurwa, P.S.-
Jagannathpur, Ranchi 834004. Petitioner

Versus

State of Jharkhand through the Secretary, Home Prison and Disaster
Management Department, Disaster Management Division, Doranda,
P.O. & P.S.-Doranda, District-Ranchi.

... Respondents

CORAM : **HON'BLE THE CHIEF JUSTICE**
 HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Petitioner : Mr. Anup Kumar Agarwal, Advocate
For the Respondent : Mr. Rajiv Ranjan, Advocate General
 Mr. Piyush Chitresh, AC to AG

ORAL JUDGMENT

02/Dated 20th May, 2021

1. The matter has been taken up through video conferencing.
2. The instant writ petition has been filed by way of *pro bono publico* praying therein for following reliefs:

“1. (a) For an order in the nature of certiorari or any other writ/order/direction for quashing the part of memo no.234/cs/Res dated 12.05.2021 [Annexure-6] whereby mandatory condition of e-pass has been imposed for movement of general public by personal vehicle even for necessary/emergency purposes.

(b) For a writ/order declaring that the people of the state of Jharkhand can move in their locality for their basic necessary activities and survival without any requirement of pass/e-pass.

(c) For an order staying the implementation of the part of memo no.234/cs/Res dated 12.05.2021 [Annexure-6] whereby mandatory condition of e-pass has been imposed for movement

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*of general public by personal vehicle even for
necessary/emergency purposes.”*

3. The writ petitioner claiming himself to be a social activist has worked for the welfare of different underprivileged communities of the State of Jharkhand, especially tribal in various parts of Jharkhand. He has done Masters in Arts in Social Work from Tata Institute of Social Sciences, Mumbai.

4. It is the case of the writ petitioner that on 18.04.2021 the respondent-State of Jharkhand had issued an order in the form of guideline under the authority given to him by State Disaster Management Authority under Section 18(2) of the Disaster Management Act in order to observe the following guidelines:

“(a) All indoor or outdoor congregations are prohibited in the state with the exception of marriage functions with the upper limit of 50 persons and last rites related functions with the upper limit of 50 persons.

(b) All processions including religious processions shall be prohibited.

(c) Not more than 5 persons shall congregate at any public place.

(d) All educational institutions including school/college/ITIs/Skill development centres/coaching class/tuition classes/training institutions shall be closed.

(e) All examinations to be conducted by various authorities of Government of Jharkhand shall be postponed.

(f) All ICDS centre shall be closed.

(g) All fairs and exhibitions are prohibited.

(h) All stadiums/gymnasiums/swimming pools/parks shall be closed.

(i) All restaurants are permitted to operate up-to-50% sitting capacity.

(j) The number of persons gathered in a religious place/place of worship shall not exceed 50% of the capacity while maintaining mandatory social distance of 2 gaz ki doori at all times.

(k) Banquet hall shall not be used for any purpose other than marriage of last rites related functions.”

5. It is the further case of the writ petitioner that the respondent-State of Jharkhand had again issued a guideline which has been named as “*Swasthya Suraksha Saptah*” vide memo No.250 dated 20.04.2021 which was made effective till 29.04.2021, whereby apart from the above restriction additional restrictions had been added, which read hereunder as:

I. All shops/establishments/offices shall remain closed in the state with the exception of the following:

(a) Medicine/healthcare/medical equipment related shops.

(b) Fair price shops of Public Distribution System/

(c) Petrol Pumps/LPG/CNG outlets.

(d) Grocery (FMCG) shops. Home delivery shall be resorted to as far as possible.

(e) Whole sale/retail shops/street vendors selling fruits, vegetables, food grains, milk products, animal feed and all eatable products including sweet shops.

(f) Hotels and restaurants. Home delivery is permitted. Sit in dining is prohibited.

(g) Dhaba located on national/state highways.

(h) Unhindered transportation of all goods is permitted. Shops an establishments dealing with transportation and logistics of goods are permitted. Loading and unloading of goods is permitted.

(i) Agricultural activities are permitted. Thus all shops/establishments dealing with agriculture related items are permitted.

(j) Industrial and mining activities are permitted.

(k) Construction activities (including MGNREGA) are permitted.

(l) E-commerce.

(m) Veterinary care shops.

(n) Excise shops.

(o) Vehicle repair shops.

(p) Cold storage and warehouses.

(q) Offices of Government of India or its undertakings.

(r) Banks / ATM / financial institutions / insurance companies / SEBI registered brokers.

- (s) *State government offices of Health and family welfare, Home, Prisons and Disaster Management, Drinking water and sanitation, Electricity, all police/homeguards/fire service related offices, Deputy Commissioner, Urban Municipal Bodies, BDO, CO and CDPO and gram panchayat offices.*
- (t) *Print electronic media.*
- (u) *Courier services.*
- (v) *Telecommunications related services.*
- (w) *Security services.*
- (x) *Any office/shop/establishment which DC considers important in efforts to control COVID-19.*
- Movement of persons by any mode to run or avail of the above mentioned permitted activities shall be allowed.*
- II. *All religious places/places of worship are permitted to open for performing rituals but entry of visitors shall remain prohibited.*
- III. *All indoor or outdoor congregations of more than 5 persons are prohibited in the state with the exception of marriage functions with upper limit of 50 persons and last rites related functions with upper limit of 30 persons.*
- IV. *All processions including religious processions are prohibited.*
- V. *All educational institutions including schools/colleges/ITs/skill development centres/coaching classes/tuition classes/training institutions shall be closed. Digital content/online education shall be provided to the students.*
- VI. *All examinations to be conducted by various authorities of government of Jharkhand shall stand postponed.*
- VII. *All ICDS centres shall be closed. Home delivery of National Food Security Act entitlements shall be ensured.*
- VIII. *All fairs and exhibitions are prohibited.*
- IX. *Movie halls/multiplexes shall remain closed.*
- X. *All stadium/gymnasiums/swimming pools/parks shall be closed.*
- XI. *Banquet halls shall not be used for any purpose other than marriage or last rites related functions or for control of COVID-19.*

XII. Movement of persons is permitted for air/train travel provided such person/s carry a valid photo identity card/necessary travel document.

XIII. No person without mask/face cover shall be permitted entry in any government office/religious place/place of worship/railway station/airport/bus/taxi/auto rickshaw/any other public place like shop etc.

XIV. With respect to gathering in context of by-election in 13 Madhupur Assembly Constituency of the Legislative Assembly of Jharkhand broad guidelines issued by Election Commission of India on 21.08.2020 shall prevail.

XV. The guidelines and state directives annexed shall be followed.

6. The restrictions imposed vide Memo No.250 dated 20.04.2021 was further extended vide Memo dated 28.04.2021 making it effective till 06.05.2021 and in furtherance to the same again by way of memo dated 28.04.2021 the said restrictions were extended till 13.05.2021 and thereafter again till 16.05.2021.
7. The State of Jharkhand again came out with a memo on 12.05.2021 by way of fresh guideline, namely, “*Swasthya Suraksha Saptah*” making it effective till 27.05.2021 whereby and whereunder restrictions have been imposed as were imposed by way of earlier guidelines with an additional rider as has been inserted in paragraph-14 to the effect that for any kind of movement by personal vehicle the person shall carry E-pass, valid photo identity card and valid ticket in case of air/rail related travel which shall be downloaded from epassjharkhand.nic.in.

It has also been mentioned therein that e-pass shall not be required for movement related to medical purpose or for movement related to last rites with the further provision that all movement into

the state by personal vehicle or taxi shall be permitted only on producing e-pass. All inter-district movement by personal vehicle shall be permitted only on producing e-pass. All intra-district movement by personal vehicle shall be permitted only on producing e-pass.

8. It is the contention of the learned counsel appearing for the petitioner that imposing such conditions by issuing e-pass in order to move is arbitrary due to the following reasons:

- (i) That even for purchase of grocery/milk/vegetable/fruits and quaint essential daily items for his basic survival, if a person opt his personal vehicle he need to get e-pass first;
- (ii) If for home delivery a retail shopkeeper opt his personal vehicle for the delivery of foods he need to take e-pass or if a shopkeeper wants to purchase necessary item for the supply of the same to the general people and if for the same purpose he opt his personal vehicle he need to get e-pass;
- (iii) If a farmer or a construction worker is going for his farming/construction related work he would need even in his close locality an e-pass;
- (iv) There are cases where the whole family member is covid positive and they are getting food/milk/medicine etc., with the help of their relatives who are living at a distant place who used their personal vehicle to help their family member;

- (v) The State Government had already stopped all the necessary activity within the state and only urgent activities has been permitted to allow therefore people has already been restricted and they are not going out for any unnecessary purposes;
- (vi) If the people of the State has been permitted to perform only necessary activities and if for that also they will be compelled to get e-pass then it is surely unjust;
- (vii) That in the State many people are living in rural area where network connectivity is very low and in many cases people do not have smart phone and therefore it is not possible for them to get e-pass every day;
- (viii) In many cases necessary house utility items are not available at nearby shop in such situation a person is required to travel by personal vehicle and for this if he will be compelled to get e-pass then it will be a kind of humiliation;
- (ix) If for every activity if a person is compelled to disclose the same to the government then it amounts to violation of right to privacy;

And therefore, the instant writ petition has been filed in the nature of certiorari for quashing the part of the memo dated 12.05.2021.

9. *Per contra*, Mr. Rajiv Ranjan, learned Advocate General appearing for the State has submitted that the writ petition is nothing but has

been filed in order to misuse the judicial proceeding because the State Government has exercised such jurisdiction as has been conferred under Section 18(2)(d) of the Disaster Management Act, 2005 taking into consideration the immediate surge of COVID-19 and large scale death due to COVID-19 infection in order to break the chain and taking into consideration the paucity of beds in the hospitals of different districts of the State of Jharkhand.

It has further been submitted that the State being a welfare State is having paramount consideration to save the life of the people first and the State Government has taken a policy decision to deal with the situation since it has been observed by the State Government that the people are moving here and there leading to increase in the number of COVID-19 cases creating heavy load on the limited health resources of the State of Jharkhand and also on the limited medicines which are being supplied by the Central Government.

He further submits that the intention of the writ petitioner can also be understood from another angle that when on the last occasion when the lockdown had been imposed by the Central Government across the country, no such litigation was filed but as of today, the State Government is only restricting the unnecessary movement of the people so that the surge in COVID-19 be put on check and the life of the people may be saved by taking into consideration the fact that the daily earner and the people who are in requirement of routine articles for maintenance of their life the arrangements have been made by issuance of e-pass so that there

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may not be any disturbance in their movement if they are going by their vehicle but what is being said by the writ petitioner showing the said memo as an arbitrary since e-pass is required in the movement of vehicle.

Further, on the ground that even for taking vegetable and milk, e-pass is required if the persons are moving on vehicles, the question is that if the life of the people is to be saved and stringent decision is required to be taken taking into consideration the daily requirement of the people, if certain restrictions have been imposed to put check on the movement of the people the same cannot be said to be arbitrary because the life of the people is the prime concern of the State.

The learned Advocate General on the basis of the aforesaid submission has submitted that the present writ petition is fit to be dismissed, as such, the same may be dismissed.

10. We have heard the learned counsel for the parties and appreciated the documents available on record and considered the fact wherein it is the admitted case of the writ petitioner that the memo dated 12.05.2021 in continuation to the earlier memo whereby and whereunder the State of Jharkhand had imposed certain restrictions upon the free movement of the people, the State was compelled to take such decision by considering the fact of acute surge in COVID-19 infection and large number of casualties/fatalities as also the limited number of beds both in government as well as private hospitals and the imbalance in between the demand and

supply of life saving drugs like Remdesivir etc., and in such circumstances the State Government has exercised the power conferred under the Disaster Management Act, 2005 wherein it has been provided under Section 18(2)(d) thereof to take such decision based upon the decision be taken by the Ministry of Home Affairs vide order dated 23.03.2021.

11. We have further found from the order issued by the State of Jharkhand on 18.04.2021 as has been appended to the writ petition that such restrictions have been imposed on the basis of the instructions issued by the Ministry of Home Affairs vide order dated 23.03.2021.

In furtherance to the aforesaid order again the State of Jharkhand had imposed restrictions vide order dated 20.04.2021 operative till 29.04.2021 by observing “*Swasthya Suraksha Saptah.*” Again the restrictions have been extended vide order dated 28.04.2021 making it operative till 06.05.2021, thereafter vide memo dated 12.05.2021 till 27.05.2021 but by this time with another rider of issuance of e-pass for moving outside the home, this Court, therefore, has found from the decision of the State Government that the decision has been taken to combat the situation of acute surge in COVID-19 infection by exercising the power conferred under Disaster Management Act, 2005.

12. So far as the issuance of e-pass is concerned, we are not in disagreement with the submission made on behalf of the learned Advocate General appearing for the State explaining to this Court

about the large scale death due to COVID-19, dearth of beds both in government as well as private hospitals, imbalance in between demand and supply of life saving drugs like Remdesivir, etc., and therefore, it cannot be denied that the State Government has considered the aspect of the matter that if restrictions will not be imposed in order to break the chain of the infection of COVID-19 virus the situation will further worsen due to less number of beds in hospitals and imbalance in between the demand and supply of medicines which not only the State of Jharkhand is facing but the entire country is facing and if in such a situation, the State Government has taken a decision by putting a rider of e-pass for movement from outside the home the same cannot be said to be unreasonable and arbitrary and that too the same is up to 27.05.2021 subject to further decision of the Government depending upon the situation.

13. We have further observed from the decision of the State Government that the State Government has put restrictions initially for a week, thereafter, after reviewing the situation it has been extended from time to time taking into consideration the situation and when it has been found that the death of the patients suffering from COVID-19 is accelerating and if in such a situation to put a check in the free movement of the people, certain conditions have been imposed, the same cannot be said to be unreasonable and arbitrary.

14. It also requires to refer herein that as per the Government guidelines the consideration has been made that the persons who are going for

medical treatment or coming out from the house for medical purpose, no e-pass is required save and except such persons are required to show the prescription of the doctors. The guideline further suggests that who are moving without any vehicle or by cycle, no e-pass is required.

15. Learned counsel for the petitioner has made emphasis by making submission that in the remotest area, the people are not in a position to get the e-pass, as such, there is every likelihood that they will face difficulty but that contention is not acceptable to this Court because in the remotest area or the rural areas of the State, people mostly travel either by foot or by cycle for which no e-pass is required.

Further, as has been informed by the learned Advocate General that in each and every block of the district there is 'Pragya Kendra' which facilitate in making e-passes.

16. This Court deems it fit and proper to deal with the meaning of public interest litigation. Public interest litigation does not mean that which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected.

The issue of public interest fell for consideration before the Hon'ble Apex Court in *Ashok Kumar Pandey v. State of W.B.*, (2004) 3 SCC 349, wherein the Hon'ble Apex Court dealing with

the definition of public interest has laid down at paragraph-14, which read as hereunder:

“14. The court has to be satisfied about: (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; and (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests: (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions.”

The public interest litigation which has been defined in ***Ashok Kumar Pandey v. State of W.B. (supra)***, the Hon’ble Apex Court at paragraphs-5, 6, 7, 8, 9 and 10, has held as under:

“5. It is necessary to take note of the meaning of the expression “public interest litigation”. In Stroud’s Judicial Dictionary, Vol. 4, 4th Edn., “public interest” is defined thus:

“Public interest.—(1) A matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected.”

6. *In Black’s Law Dictionary, 6th Edn., “public interest” is defined as follows:*

“Public interest.—Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, State or national Government.”

7. *In Janata Dal case this Court considered the scope of public interest litigation. In para 53 of the said judgment, after*

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considering what is public interest, the Court has laid down as follows: (SCC p. 331)

“53. The expression ‘litigation’ means a legal action including all proceedings therein, initiated in a court of law with the purpose of enforcing a right or seeking a remedy. Therefore, lexically the expression ‘PIL’ means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected.”

8. *In paras 60, 61 and 62 of the said judgment, it was pointed out as follows: (SCC p. 334)*

“62. Be that as it may, it is needless to emphasise that the requirement of locus standi of a party to a litigation is mandatory, because the legal capacity of the party to any litigation whether in private or public action in relation to any specific remedy sought for has to be primarily ascertained at the threshold.”

9. *In para 98 of the said judgment, it has further been pointed out as follows: (SCC pp. 345-46)*

“98. While this Court has laid down a chain of notable decisions with all 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.”

10. *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.”

The Hon’ble Apex Court further in *State of Uttaranchal vs. Balwant Singh Chaufal and Ors. (2010) 3 SCC 402*, has been pleased to lay down the guidelines as under paragraph 181, extract of which read as hereunder:

“181. (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.

17. This Court, after going across the aforesaid judgment and taking into consideration the factual aspect involved herein, is of the view that if the case of the writ petitioner would be compared with the situation which is prevailing in the State of Jharkhand as also across the country due to acute surge in COVID-19, if in such situation certain restrictions have been imposed by the State of Jharkhand by reviewing the same from time to time the same cannot be said to be unreasonable and arbitrary and in that view of the matter, considering the public interest at large, i.e., in order to save the life of the people, according to our considered view, the decision of the State Government cannot be said to suffer from any malice, arbitrariness and unreasonableness.

Further, on the basis of the judgment referred hereinabove in *Ashok Kumar Pandey v. State of W.B. (supra)* public interest has been defined which according to Black Law's dictionary means that something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local,

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State or National, therefore, we are of the view that the writ petitioner has failed to make out a case showing the writ petition to be in the nature of public interest since at this stage the interest of the people would largely be served by saving their life and if in such a station the State Government has taken a decision for issuance of e-pass the same cannot be said to suffer from infirmity. Accordingly, the instant writ petition fails and is dismissed.

(Dr. Ravi Ranjan, C.J.)

(Sujit Narayan Prasad, J.)

Saurabh

A.F.R.