

W.P.No.12599 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 05.08.2024

CORAM :

THE HON'BLE MR.D.KRISHNAKUMAR, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.B.BALAJI

W.P.No.12599 of 2024

Kannan Swaminathan

..

Petitioner

Vs.

1. Union of India

Central Vigilance Commission

Through its Chief Vigilance Commissioner

Satarkata Bhavan

Block-A, GPO Complex, INA

New Delhi 110 023.

2. State of Tamil Nadu

Directorate of Vigilance and Anti-Corruption

Through its Director General of Police

No.293, MKN Road, Alandur

Chennai 600 016.

3. State of Tamil Nadu

Tamil Nadu Water Supply and Drainage Board

Through its Managing Director

TWAD Board, Chepauk, Chennai 600 005.

..

Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Mandamus directing the Special Investigation Team (SIT) to initiate an investigation under the supervision of this Hon'ble Court and/or the CVC, into the charges of corruption, criminal misconduct etc. against respondent no.3 and consequential action thereupon by considering the petitioner's representation dated 16.02.2024.

For the Petitioner : Mr.Thamizhanban

For the Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
Assisted by
Mr.Kishore Kumar
Govt. Advocate (Crl. Side)
for Respondent-2

Mrs.S.Mekhala
for Respondent-3

ORDER

(Order of the Court was made by
the Hon'ble Acting Chief Justice)

The writ petition has been filed as a public interest litigation, seeking a direction to the Special Investigation Team (SIT) to initiate an investigation under the supervision of this Hon'ble Court and/or the CVC, into the charges of corruption, criminal misconduct etc. against the third



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respondent and consequential action thereupon by considering the petitioner's representation dated 16.02.2024.

2. The petitioner has stated that he has no personal interest in the litigation and the writ petition is not guided by self-gain nor for gain for any other person/institution/body. He is a Civil Engineer and has 20 years of national and international experience in the water supply and sewerage project.

3. According to the petitioner, the third respondent has not conducted the tender process for drinking water supply across Tamil Nadu in a transparent manner as per the Central National Jal Jeevan Mission Guidelines.

4. It is stated that Article 47, namely duty of the State to raise the level of nutrition and the standard of living and to improve public health, is violated since Indian Standard IS 12288 was not followed. Further, the



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testing of pipeline as to the soundness, leak tightness of pipes and fittings, tightness of joints, soundness of any construction work has not been done.

The test pressure is not followed which is in violation of IS 12288-1987.

Disinfection of drinking water before commissioning for use has not been made as per IS 12288-1987. Similarly, the removal of pavement and road surfaces for trench excavation and for installation of gate valves, manholes or other structures, etc. has not been made as per IS 12288-1987.

5. Contending that if the laying of pipelines result in leakage of water and mixing sewerage water, it would cause danger to the life of the people at large in Tamil Nadu, the petitioner has made a complaint to the National Jal Jeevan Mission on 17.02.2024 in respect of corruption involved. The National Jal Jeevan Mission forwarded the complaint to the Principal Secretary to Government of Municipal Administration and Water Supply of Tamil Nadu for necessary action. Thereafter, the complaint was forwarded to the second respondent by the first respondent. As no action was taken, the petitioner has filed this writ petition.

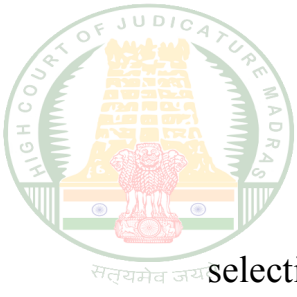


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6. The third respondent has filed an affidavit raising preliminary objections to the allegations of the petitioner. It is stated that one Ganapathy Swaminathan of M/s. Swetha Constructions, Kumbakonam, Thanjavur District, is the brother of the petitioner. The said Ganapathy Swaminathan is a registered contractor and looking after the operation and maintenance of Combined Water Supply Schemes (CWSS) of Tamil Nadu Water Supply and Drainage Board since 2019 and was awarded contract for maintenance of Combined Water Supply Scheme at five Town Panchayats in 2022-23.

7. The Tamil Nadu Water and Drainage Board has revised the performance based bid document for operation and maintenance of Combined Water Supply Scheme for three years from 2023-24 to 2025-26 and invited tenders. The said Ganapathy Swaminathan, brother of the petitioner, did not fulfill the criteria and therefore, became ineligible to participate in the tender. Even the attempt of the petitioner to be empanelled as a Third Party Agency did not fructify on the ground that



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selection is through a transparent tender process and can apply whenever it is called for and have to go through a normal course of selection.

8. The third respondent has filed a preliminary objection with regard to maintainability of the writ petition by contending that the petitioner has suppressed the above facts and there is no element of public interest involved in the writ petition.

9. Heard Mr.Thamizhanban, learned counsel appearing for the petitioner, Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondents 1 and 2, Mrs.S.Mekhala, learned counsel for the third respondent and also perused the entire materials on record.

10. Considering the preliminary objection raised by the third respondent, this Court has gone through the averments made by the petitioner and the affidavit filed by the third respondent in the preliminary objection.



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11. It is the contention of the petitioner that there is no personal interest involved in the present writ petition and he has filed the writ petition only for public interest and there is no gain for any other person or institution or any body.

12. The primordial contention of the third respondent for the aforesaid averment made by the petitioner is that there is no element of public interest involved in filing the writ petition and it is only a private interest litigation by stating in the affidavit that the petitioner's brother, namely Ganapathy Swamy is a registered contractor and looking after the operation and maintenance of Combined Water Supply Schemes (CWSS) of the Tamil Nadu Water Supply and Drainage Board and he became ineligible to participate in the tender. Therefore, in view of the specific contention raised by the third respondent, this Court will examine whether the writ petition filed is a Public Interest Litigation or Private Interest Litigation.



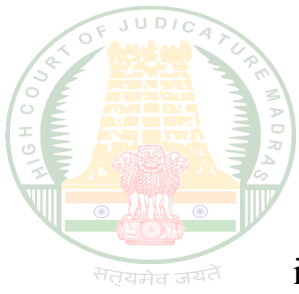
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13. It is settled law that before entertaining public interest litigation, the Courts have to be satisfied about the bona fide of the petitioners as it is the cause of public which has to be espoused through such litigation. It has also been laid down by the Supreme Court of India that of late there has been abuse of public interest litigation which is primarily designed to raise the grievances of the down trodden sections of society, tackle environmental pollution or to bring about probity in governance.

14. In *BALCO Employees' Union (Regd.) v. Union of India [AIR 2002 SC 350]* the Hon'ble Apex Court recognized that there have been, in recent times, increasing instances of abuse of public interest litigation. Accordingly, the Apex court has devised a number of strategies to ensure that the attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. In the said decision the Apex Court succinctly opined:

“77. Public interest litigation, or PIL as it is more commonly known, entered the Indian judicial process in 1970. It will not be incorrect to say that it is primarily the judges who have innovated this type of litigation as there was a dire need for



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it. At that stage, it was intended to vindicate public interest where fundamental and other rights of the people who were poor, ignorant or in socially or economically disadvantageous position and were unable to seek legal redress were required to be espoused. PIL was not meant to be adversarial in nature and was to be a cooperative and collaborative effort of the parties and the court so as to secure justice for the poor and the weaker sections of the community who were not in a position to protect their own interests. Public interest litigation was intended to mean nothing more than what words themselves said viz. 'litigation in the interest of the public'.

78. While PIL initially was invoked mostly in cases connected with the relief to the people and the weaker sections of the society and in areas where there was violation of human rights under Article 21, but with the passage of time, petitions have been entertained in other spheres. Prof. S.B. Sathe has summarised the extent of the jurisdiction which has now been exercised in the following words:

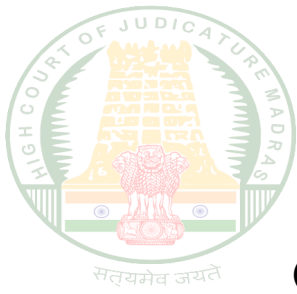
'PIL may, therefore, be described as satisfying one or more of the following parameters. These are not exclusive but merely descriptive:

— Where the concerns underlying a petition are not individualist but are shared widely by a large number of people (bonded labour, undertrial prisoners, prison inmates).

— Where the affected persons belong to the disadvantaged sections of society (women, children, bonded labour, unorganised labour etc.).

— Where judicial law-making is necessary to avoid exploitation (inter-country adoption, the education of the children of the prostitutes).

— Where judicial intervention is necessary for the protection of the sanctity of democratic institutions



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(independence of the judiciary, existence of grievance redressal forums).

— Where administrative decisions related to development are harmful to the environment and jeopardize people's right to natural resources such as air or water.’

79. There is, in recent years, a feeling which is not without any foundation that public interest litigation is now tending to become publicity interest litigation or private interest litigation and has a tendency to be counterproductive.

80. PIL is not a pill or a panacea for all wrongs. It was essentially meant to protect basic human rights of the weak and the disadvantaged and was a procedure which was innovated where a public-spirited person files a petition in effect on behalf of such persons who on account of poverty, helplessness or economic and social disabilities could not approach the court for relief. There have been, in recent times, increasingly instances of abuse of PIL. Therefore, there is a need to re-emphasize the parameters within which PIL can be resorted to by a petitioner and entertained by the court. This aspect has come up for consideration before this Court and all we need to do is to recapitulate and re-emphasize the same.”

15. In *Guruvayoor Devaswom Managing Committee v. C.K.Rajan* [(2003) 7 SCC 546], the Hon'ble Apex Court has held that where a segment of public is not interested in the cause, Public Interest Litigation would not ordinarily be entertained.



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16. In *State of Uttranchal Vs. Balwant Singh, 2010 (3) SCC 402*

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wherein it has been held that it is necessary to check the abuse of public interest litigation as the instances of its misuse have increased in recent times. The relevant paras of the judgement are reproduced hereunder:-

"141. A three-Judge Bench of the Supreme Court of Nepal in *Surya Prasad Sharma Dhungle v. Godawari Marble Industries* in writ petition No.35 of 1992 passed significant directions. It was alleged in the petition that Godawari Marble Industries have been causing serious environmental degradation to Godawari forest and its surrounding which is rich in natural grandeur and historical and religious enshrinement are being destroyed by the respondents. In the petition it was mentioned that the illegal activities of the respondent Godawari Marble Industries have caused a huge public losses. The Supreme Court of Nepal gave significant directions to protect degradation of environment and ecology. The Court adopted the concept of sustainable development.

Abuse of Public Interest Litigation

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



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abuse on the basis of monetary and non-monetary directions by the Courts.”

17. Firstly, the Supreme Court has limited standing in PIL to individuals "acting bonafide." Secondly, the Supreme Court has sanctioned the imposition of "exemplary costs" as a deterrent against frivolous and vexatious public interest litigations. Thirdly, the Supreme Court has instructed the High Courts to be more selective in entertaining the public interest litigations. Thus, the Supreme Court has attempted to create a body of jurisprudence that accords broad enough standing to admit genuine PIL petitions, but nonetheless limits standing to thwart frivolous and vexatious petitions. The Supreme Court broadly tried to curtail the frivolous public interest litigation petitions by two methods--one monetary and second, non-monetary.

Monetary Penalties

18. The first category of cases is that where the Court on the filing of frivolous public interest litigation petitions, dismissed the petitions with exemplary costs.



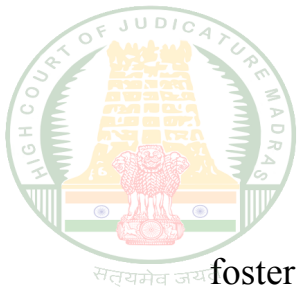
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19. In ***S.P Anand v. H.D. Deve Gowda [AIR 1997 SC 272]*** the Court warned that it is of utmost importance that those who invoke the jurisdiction of this Court "seeking a waiver of the locus standi rule must exercise restraint in moving the Court by not plunging in areas wherein they are not well-versed".

20. In ***Sanjeev Bhatnagar v. Union of India [AIR 2005 SC 2841]*** the Apex Court went a step further by imposing a monetary penalty against an advocate for filing a frivolous and vexatious PIL petition. The Court found that the petition was devoid of public interest, and instead labelled it as "publicity interest litigation" and dismissed the petition with costs of Rs 10,000/-.

21. Similarly, in ***Dattaraj Nathuji Thaware v. State of Maharashtra [AIR 2005 SC 540]*** the Supreme Court affirmed the High Court's monetary penalty against a member of the Bar for filing a frivolous and vexatious PIL petition. This Court found that the petition was nothing but a camouflage to



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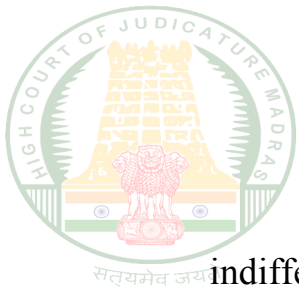
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foster personal dispute. Observing that no one should be permitted to bring disgrace to the noble profession, the Court concluded that the imposition of the penalty of Rs 25,000/- by the High Court was appropriate. Evidently, the Hon'ble Supreme Court has set clear precedent validating the imposition of monetary penalties against frivolous and vexatious PIL petitions, especially when filed by advocates.

22. In *Neetu v. State of Punjab [AIR 2007 SC 758]*, the Court concluded that it is necessary to impose exemplary costs to ensure that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts.

Non-Monetary Penalties

23. This Court, in the second category of cases, even passed harsher orders. In *Charan Lal Sahu v. Zail Singh [AIR 1984 SC 309]* the Supreme Court observed that, "we would have been justified in passing a heavy order of costs against the two petitioners" for filing a "light-hearted and

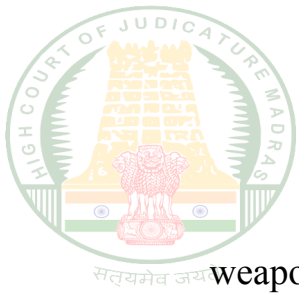


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indifferent" PIL petition. However, to prevent "nipping in the bud a well-founded claim on a future occasion", the Court opted against imposing monetary costs on the petitioners. In that case, this Court concluded that the petition was careless, meaningless, clumsy and against public interest. Therefore, the Court ordered the Registry to initiate prosecution proceedings against the petitioner under the Contempt of Courts Act. Additionally, the Court forbade the Registry from entertaining any future PIL petitions filed by the petitioner, who was an advocate in that case.

24. The Hon'ble Apex Court has been quite conscious that the forum of this Court should not be abused by anyone for personal gain or for any oblique motive. In *BALCO case* the Apex Court held that the jurisdiction is being abused by unscrupulous persons for their personal gain. Therefore, the Court must take care that the forum be not abused by any person for personal gain. In *Dattaraj Nathuji Thaware case* the Apex Court expressed its anguish on misuse of the forum of the Court under the garb of public interest litigation and observed that the "public interest litigation is a



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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 court must not allow its process to be abused for oblique considerations....".

25. In ***Dattaraj Nathuji Thaware case***, the Apex Court encouraged the imposition of a non-monetary penalty against a PIL petition filed by a member of the Bar. The Court directed the Bar Councils and Bar Associations to ensure that no member of the Bar becomes party as petitioner or in aiding and/or abetting files frivolous petitions carrying the attractive brand name of public interest litigation. This direction impels the Bar Councils and Bar Associations to disbar members found guilty of filing frivolous and vexatious PIL petitions.

26. In ***Holicow Pictures (P) Ltd. v. Prem Chandra Mishra [AIR 2008 SC 913]*** the Apex Court observed as under:



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"12. It is depressing to note that on account of such trumpetry 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, detenue 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 muffing 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."



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27. In *Ardhendu Kumar Das v. The State of Orissa [Special Leave to Appeal © No.10427 of 2022 dated 03.06.2022]*, the Hon'ble Apex Court observed as under:

“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 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/-...”

28. In *Ashok Pandey v. Union of India and Others [2023 LiveLaw (SC) 884]*, the Hon'ble Apex Court observed as under:

“4... This is only a frivolous attempt to use the PIL jurisdiction to propagate some publicity for the petitioner. We are clearly of the view that such frivolous PILs occupy the time and attention of the Court thereby deflecting the attention of the Court from more serious matters and consuming the



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infrastructure of the judicial manpower and Registry of the Court. Time has come when the Court should impose exemplary costs in such frivolous PILs. We accordingly dismiss the petitioner with costs of Rs.500,000/- which shall be deposited by the petitioner in the Registry of this Court within a period of four weeks.”

29. In the present case on hand, on a perusal of the preliminary objections filed by the third respondent, it is clear that the petitioner has not filed this writ petition in public interest, though it is styled as public interest litigation. Though the third respondent has filed preliminary objections on 20.06.2024, the petitioner neither filed any reply or affidavit refuting the averments made by the third respondent nor the counsel for the petitioner denied the averments made in the preliminary objection that the brother of the petitioner is a registered contractor and he was not awarded with any contract. The petitioner, under the guise of this Public Interest Litigation, is espousing his grievance towards non-awarding of contract to his brother. In the light of the aforesaid decisions of the Hon'ble Apex Court, we are of the view that there is no element of public interest in this writ petition.



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30. When the matter was listed for admission on 03.06.2024, there was no representation on behalf of the petitioner / party-in-person and it was directed to be listed on 03.07.2024. On 03.07.2024, learned counsel for the petitioner entered appearance and the matter was directed to be posted on 05.08.2024. In the interregnum, a preliminary objection has been filed by the third respondent questioning the locus standi of the petitioner and the matter is listed today.

31. Today, when the matter is taken up, the petitioner having engaged a counsel, was interfering with the Court proceedings by appearing in video conference and arguing parallely with his counsel, inspite of repeated warning given by us. In the light of the fact that there is no public element involved in the instant writ petition and the disruptive attitude of the petitioner during court proceedings, disregards the decorum of the Court, we are constrained to dismiss this writ petition with a cost of Rs.50,000/- (Rupees fifty thousand only) payable to the Tamil Nadu State Legal Services Authority.



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32. This Writ Petition stands dismissed accordingly. No costs.

Consequently, W.M.P.No.13763 of 2024 is also dismissed.

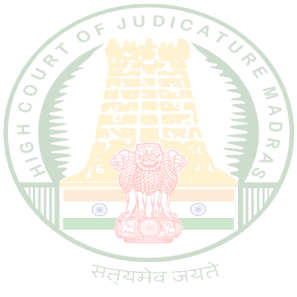
(D.K.K., ACJ.) (P.B.B., J.)
05.08.2024

Index : Yes/No
Neutral Citation : Yes/No
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To

1.The Chief Vigilance Commissioner
Union of India, Central Vigilance Commission
Satarkata Bhavan
Block-A, GPO Complex, INA
New Delhi 110 023.

2.The Director General of Police,
State of Tamil Nadu
Directorate of Vigilance and Anti-Corruption
No.293, MKN Road, Alandur
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D.KRISHNAKUMAR, ACJ,
AND
P.B.BALAJI,J.

(kpl/jvm/ak)

3.The Managing Director,
Tamil Nadu Water Supply and Drainage Board
TWAD Board, Chepauk, Chennai 600 005.

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