

# HIGH COURT OF DELHI

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CWP 6884 OF 2003

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Date of decision : 29 October, 2003

# SANJAY KUMAR SONI & Anr ... .. Petitioner  
! ... .. through : Mr. M.G. Kapoor  
... .. Advocate

-VERSUS -

\$ UNION OF INDIA & ORS... .. Respondent  
^ ... .. through : Mr Rahul Sharma  
... .. for Mr U. Hazarika, Advocate

Coram :-

THE HON'BLE MR JUSTICE B.C. PATEL, C.J  
THE HON'BLE MR JUSTICE A.K.SIKRI.

- i) Whether Reporters of local papers may be allowed to see the judgment.
- ii) To be referred to the reporter or not ?
- iii) Whether the judgment should be reported in the Digest ?

\*B.C.PATEL, C.J.

This petition is filed as public interest litigation by shareholders of the company known as INDAL against Sterlite Industries ( India) Ltd situated at .Aurangabad. This petition is also filed against Securities & Exchange Board of India having its office at Mumbai. Though the respondents who are required to carry out the mandate are not situated within the territorial limits of this Court, yet this petition is filed in this Court. Learned counsel states that Union of India is also a party and therefore, this Court will have the jurisdiction. One should not forget that cause of action is important and not the residence or office of the respondent , more particularly, when the directions which are sought to be implemented are issued by respondent No.2 having its office at Mumbai. It may



Signature Not Verified

Digitally Signed By: AMULYA  
Certify that the digital file and  
physical file have been compared the  
digital data is as per the physical file

be convenient to the petitioners to file a petition in Delhi, as it appears that the petitioners are residents of Delhi.

2.. Earlier, a petition was filed in this Court and the Court entertain it on the same subject matter and therefore, we have heard the learned counsel in the matter.

3.. The directions given by Securities & Exchange Board of India, ( SEBI, for short) are required to be complied with. As per order made by SEBI on 28.10.1998, respondent No.3 was required to pay the shareholders of a company known as INDAL, Rs. 221/ for each share lodged with respondent No. 3 with interest @ 15% p.a. from 2.7.1998 till payment. The appellate authority examined the matter and the appeal preferred by respondent No.3 was rejected. Subsequently, a writ petition was filed by respondent No.3 and one Eastern Galvanising Pvt Ltd having its office at Patna challenging the order in this Court. The Court issued certain directions in the matter while dismissing the petition with costs. Only modification was with regard to the benefit of direction that would go to only those shareholders of INDAL whose shares were still with respondent No.3 and the petitioner in the said writ petition either of their own or through their merchant banks in that behalf.

4.. Despite directions given by SEBI and the order made by this Court, as the petitioners were not satisfied, as directions were not carried out, contempt petition was filed in this Court which is pending and is likely to be taken up on 27.11.2003, as stated by the learned counsel.

5.. At page 48 of the petition, is the order made by SEBI and the directions given therein are as under:-

“12. If however, the acquirers fail to pay the said amount within 15 days of this order, the escrow amount shall be liable to be forfeited. Enam shall then proceed to realise proceeds of the securities lying in the escrow account and make payment of consideration



and interest amount to the shareholders of INDAL who had accepted the offer of the acquirers. Thereafter, for release of balance amount/securities. Enam may approach SEBI. The copy of the order be forwarded to SIIL/EGPL and Enam for immediate compliance.”

6.. This direction is required to be carried out as modified by the order of the Division Bench.

7.. It is required to be noted that the petitioner by letter dated 23.8.2003 called upon the Chairman of respondent No.2 to direct respondent No.3 to implement the order dated 28.10.2003, as modified by the High Court and to pay all the shareholders of Indal @ Rs. 19.50 per share as this amount was deducted from Rs. 221/ without any authority and legal sanctity and in contravention of Section 27 of the Securities Contracts ( Regulation) Act, 1956.. The said letter is in the file giving all the details of the proceedings. This petition is filed by the petitioners stating that it is in public interest, because it would not be possible for individual shareholders to approach the Court. Our attention was invited to the decision of the Apex Court in Sheela Barse v. UOI, AIR 1988 SC 2211. Suffice it to say that proceedings in PIL are, therefore, intended to vindicate and effectuate the public interest by prevention of violation of rights, constitutional or statutory, of sizeable segment of society which owing to poverty, ignorance, social and economic disadvantage cannot themselves assert, and quite often not even aware of those rights.

8.. In case of BALCO EMPLOYEES' UNION (REGD.) VS. UNION OF INDIA & OTHERS, reported in (2002) 2 SCC 333, the Apex Court has again pointed out what is the Public Interest Litigation and when Court should interfere. We just re-produce paragraph Nos. 78, 79, 80, 82 & 83 to 85 :-

“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 (independence of the judiciary, existence of grievances 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."

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.

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.

The limitation within which the Court must act, and the caution against the abuse of the same is referred to by Bhagwati, J. at p. 219-20 as follows : (SCC para 24).


"24. But we must be careful to see that the member of the public, who approaches the court in cases of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration. The court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective. Andre Rabie has warned that 'political pressure groups who could not achieve their aims through the administrative process' and we might add, through the political process, 'may try to use the courts to further their

aims'. These are some of the dangers in public interest litigation which the court has to be careful to avoid. It is also necessary for the court to bear in mind that there is a vital distinction between locus standi and justiciability and it is not every default on the part of the State or a public authority that is justiciable. The court must take care to see that it does not overstep the limits of its judicial function and trespass into areas which are reserved to the executive and the legislature by the Constitution. It is a fascinating exercise for the court to deal with public interest litigation because it is a new jurisprudence which the court is evolving, a jurisprudence which demands judicial statesmanship and high creative ability. The frontiers of public law are expanding far and wide and new concepts and doctrines which will change the complexion of the law and which were so far as embedded in the womb of the future, are beginning to be born.

25. Before we part with this general discussion in regard to locus standi, there is one point we would like to emphasise and it is, that cases may arise where there is undoubtedly public injury by the act or omission of the State or a public authority but such act or omission also causes a specific legal injury to an individual or to a specific class or group of individuals. In such cases, a member of the public having sufficient interest can certainly maintain an action challenging the legality of such act or omission, but if the person or specific class or group of persons who are primarily injured as a result of such act or omission, do not wish to claim any relief and accept such act or omission willingly and without protest, the member of the public who complains of a secondary public injury cannot maintain the action, for the effect of entertaining the action at the instance of such member of the public would be to foist a relief on the person or specific class or group of persons primarily injured, which they do not want."

In Sachidanand Pandey Vs. State of W.B. (1987) 2 SCC 295 ¶. Khalid, J. observed as follows : (SCC pp. 334-35, para 61)

61. It is only when courts are apprised of gross violation of fundamental rights by a group or a class action or when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the courts, especially this Court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the underdog and the neglected. I will be second to none in extending help when such help is required. But this does not mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self-imposed restraint on public interest litigants."



9.. Thereafter, there are various judgments of the Apex Court giving guidelines as to in which type of cases, petition should be entertained in PIL,. There is a right of the citizen wherein he can approach the Court under Article 226 of the Constitution but not under the style of PIL. The Apex Court in the case of Union of India and Ors. vs. Adani Exports Ltd and another, (2002) 1 SCC 567 wherein, while considering the question of territorial jurisdiction of the High Court, the Supreme Court observed as under:-

“17. It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the court to decide a dispute which has, at least in part, arisen within its jurisdiction. It is clear from the above judgment that each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. If we apply this principle then we see that none of the facts pleaded in para 16 of the petition, in our opinion, falls into the category of bundle of facts which would constitute a cause of action giving rise to a dispute which could confer territorial jurisdiction on the courts at Ahmedabad.”.

10.. In the case of Oil and Natural Gas Commission vs. Utpal Kumar Basu and others, (1994) 4 SCC 711, the question of territorial jurisdiction came to be considered by the Apex Court. In that case, in response to advertisement inviting tenders at Delhi for works to be executed in Gujarat, the petitioner sent its tender to Delhi from Calcutta. He made representations from Calcutta against non-consideration of its offer. Court pointed out that such averments in the petition did not disclose that even a part of the cause of action arose within the territorial jurisdiction of Calcutta High Court.

11.. The Apex Court in the said case considered the case of Subodh Kumar Gupta vs. Shrikant Gupta and others reported in (1993) 4 SCC 1. We reproduce para 9 of the Apex Court judgment in case of ONGC (supra) :

“In *Subodh Kumar Gupta case*, the facts revealed that he had instituted a suit in the Court of Senior Judge, Chandigarh, for dissolution of the firm in which he as partner had 20% share along with his father, brothers and one another. The head office of the firm was situate in Mumbai where the firm was registered with the Registrar of Firms. Its factory was situate at Mandsaur where the father Rajaram Gupta lived with his sons and attended to the partnership business. The plaintiff-petitioner was also residing in Mandsaur till 1974 when he shifted to Chandigarh. He, however, visited Mandsaur often in connection with the business of the firm. The case. Pleaded by him was that after he shifted to Chandigarh he used to call for and received the statements of account of the business carried on at Mandsaur. He had got letterheads printed indicating that the branch office of the firm was at Chandigarh and he claimed that he also booked orders for the firm at Chandigarh. It was also pleaded that certain disputes had arisen regarding the management of the partnership firm and in regard to the correctness of the accounts which were discussed at the meeting in Bhilai at the end whereof an agreement was drawn up for the dissolution of the partnership and for distribution of assets amongst the partners to which the plaintiff was a signatory. The suit filed in the Chandigarh court was resisted on the preliminary contention that no part of the cause of action had arisen at Chandigarh and therefore that court had no jurisdiction. The Chandigarh court upheld the contention and this Court affirmed the said view. While dealing with the averment that the plaintiff was carrying on business of the firm from Chandigarh where the branch office of the firm was situate this court held that there is no averment that the branch at Chandigarh was started with the consent of the other partners and intimation thereof was given to the Registrar of Firms as required by Section 61 of the Partnership Act; the mere printing of stationery was neither here nor there and therefore no part of the cause of action could be said to have arisen within the territorial jurisdiction of the Chandigarh Court.”

12.. Thus it is very clear that the High Court at Delhi will have no jurisdiction as cause of action has arisen outside the territorial limits of Delhi and within the territorial limits of other State, namely in the instant case, State of Maharashtra. The Apex Court deeply regretted and deprecated the practice of exercising

jurisdiction and passing interlocutory orders in the matters where it lacked territorial jurisdiction and while allowing the appeal preferred by ONGC directed NICCO to pay the cost of Rs.50,000/-.

13.. In the case of Navin Chandra N. Majithia vs. State of Maharashtra and others; 2000 (7) SCC 640, the Apex Court was also required to considered the same question. The Apex Court in para 21 considered the decision of the Apex Court in case of ONGC (supra) and after referring Article 226(2), the court pointed out :

“On a plain reading of the aforesaid two clauses of Article 226 of the Constitution it becomes clear that a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action, wholly or in part, had arisen within the territories in relation to which it exercises jurisdiction, notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories..”

14.. In para 43, in the case of Navin Chandra N. Majithia ( supra), the Court pointed out as under:

“43. We make it clear that the mere fact that FIR was registered in a particular State is not the sole criterion to decide that no cause of action has arisen even partly within the territorial limits of jurisdiction of another State. Nor are we to be understood that any person can create a fake cause of action or even concoct one by simply jutting into the territorial limits of another State or by making a sojourn or even a permanent residence therein. The place of residence of the person moving a High Court is not the criterion to determine the contours of the cause of action in that particular writ petition. The High Court before which the writ petition is filed must ascertain whether any part of the cause of action has arisen within the territorial limits of its jurisdiction. It depends upon the facts in each case.”

15.. As we have heard the matter at length, instead of dismissing the petition with liberty to the petitioner to approach the appropriate court, we think it proper to give directions in view of the provisions contained in the Securities &





Exchange Board of India Act, 1992. The letter, which is written by the petitioners on 27.8.2003 gives all the details and, therefore, it would be incumbent upon the Chairman, SEBI to take all appropriate action in accordance with law to see that the order is implemented. Section 24 of SEBI Act, 1992 is required to be referred to at this juncture.

**“24. Offence.** (1) Without prejudice to any award of penalty by the Adjudicating Officer under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder, shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

(2) If any person fails to pay the penalty imposed by the Adjudicating officer or fails to comply with any of his directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years or with fine which shall not be less than two thousand rupees but which may, extend to then thousand rupees or with both.”


16.. Section 26 of the said Act is also relevant. The same reads thus:

**“26. Cognizance of offences by courts—**(1) No Court shall take cognizance of any offence punishable under this Act or any rules or regulations made thereunder, save on a complaint made by the Board.

(2) No Court inferior to that of a Metropolitan magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.”

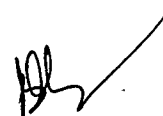
17.. Is it not the duty of the Chairman to see that interest of the public at large is protected and the order is implemented ? Is it not the duty of the Chairman to see that appropriate proceedings in the Court of law are launched with a view to see that persons are punished if directions/orders are not complied with ?

18.. Therefore, it would be just and proper to direct the Chairman, SEBI to examine the letter dated 27.8.2003 and to record a finding and if the offence is committed by not following the directions, obviously it would be incumbent



upon the Chairman to place the matter before the Board to take appropriate proceedings against the defaulters. With these directions, we dispose of the petition.

A copy of this order be sent to the Chairman of SEBI for necessary action and compliance.

  
CHIEF JUSTICE

  
A. K. SIKRI, J.

October 29, 2003  
~pawar

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