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IN THE HIGH COURT OF SIKKIM AT GANGTOK

WRIT PETITION (CIVIL) No. 23 OF 2007

All India Private Vehicle Owners Association,
1/95, WHS Kirti Nagar,
New Delhi-110015.

... Petitioner

-versus-

1. Union of India,
Through Secretary,
Ministry of Road Transport and Highway,
Parivahan Bhawan,
1, Parliament Street,
New Delhi-110001.
2. State of Sikkim,
Through Commissioner of Transport,
Transport Department,
Gangtok, Sikkim.
3. M/s Tonnjes Eastern Security Technologies Private
Limited, having its registered office at
21-B Vatsa House, Janma Bhoomi Marg,
Fort Mumbai, Maharashtra.

... Respondents

For the petitioner: Mrs. Laxmi Chakraborty, Advocate.

For the respondents: Mr. Karma Thinlay, Government Advocate
for respondents No. 1 and 2.

Mr. Bhaskar Raj Pradhan, Senior
Advocate with Miss Yangchen D. Gyatso,
Advocate for respondent No. 3.

Date of Hearing : 8.4.2009

Date of Judgment : 8.4.2009

**PRESENT: HON'BLE THE CHIEF JUSTICE
MR. JUSTICE AFTAB H. SAIKIA
HON'BLE MR. JUSTICE A.P. SUBBA, JUDGE**

JUDGMENT AND ORDER (ORAL)

Saikia, CJ

Heard Mrs. Laxmi Chakraborty, learned Counsel representing the petitioner and Mr. Karma Thinlay, learned State Counsel representing the official respondents as well as Mr. Bhaskar Raj Pradhan, learned Senior Counsel assisted by Miss Yangchen D. Gyatso, learned Counsel for Respondent No. 3.

2. This writ petition filed by the All India Private Vehicle Owners Association, being the petitioner, has been accepted as a Public Interest Litigation (for short, 'PIL'). The basic and moot grievance of the petitioner herein is that the members of the petitioner, being private vehicle owners, have been burdened with a payment of huge and heavy amount to the tune of Rs.1600/- per pair for High Security Registration Plates (for short, 'HSRP'), the supply of which has been allotted to Respondent No. 3, i.e. M/s Tonjjes Eastern Security Technologies Private Limited, having its registered office at 21-B Vatsa House, Janma Bhoomi Marg, Fort Mumbai, Maharashtra, whereas the private vehicle owners of the other States have only to pay for HSRP in between a range of Rs.500/- to Rs.900/- and hence it is an act of glaring discrimination and patent arbitrariness on the part of the State of Sikkim. Even imposition of such heavy burden in payment of price for HSRP is not permissible and highly prejudicial. It is contented

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that the respondent No. 2, State of Sikkim has decided to choose respondent No. 3 as the manufacturer of HSRP on such eligibility conditions and other tender conditions that are highly prejudicial to the public interest which can be substantiated by the fact that HSRPs which are supplied at the price of Rs.500/- to Rs.900/- approximately in other States, are going to be supplied in the State of Sikkim at a price of Rs.1600/-. Under such circumstances, a prayer has been made to quash the Notice Inviting Tender for implementation of HSRP's Project (for short, 'NIT') and to terminate the letter of intent if any issued in favour of respondent No. 3.

3. Seeking such relief in this PIL, the petitioner has made the following prayers including interim relief for stay: -

"6. Interim Relief/Stay Application:

In light of the abovementioned facts and circumstances, it is most humbly prayed that this Hon'ble Court may be pleased to grant the following interim reliefs in the pendency of the present writ petition:

- i) Pass any order or direction in the nature of writ restraining the Respondent No. 2 from proceeding any further with the Notice Inviting Tender for the implementation of the HSRP's project in the Respondent State;
- ii) Pass any order or direction in the nature of writ disqualifying the Respondent No. 3 from seeking its selection by the Respondent No. 2 for the implementation of the project in the Respondent State;
- iii) Any other relief that this Hon'ble Court may deem fit as per the facts and circumstances of the case.

PRAYER

In the light of the abovementioned facts and circumstances, it is most humbly prayed that this Hon'ble Court may be pleased to -



- i) Pass any order or direction in the nature of writ quashing the Notice Inviting Tender issued by the Respondent No. 2 and terminate the letter of intent if any issued in favour of the Respondent No. 3;
- ii) Pass any order or direction in the nature of writ requiring the Respondent No. 2 to issue a free and fair Notice Inviting Tender which does not lay down any artificial barriers in the selection process thereby causing prejudice to the public interest;
- iii) Any other relief which this court may deem fit and proper as per the facts and circumstances of the case.

And for such act of kindness the appellant as is duty bound shall ever pray."

4. On close scrutiny of the documents/papers so made available before us in this PIL, we do not find any letter of acceptance or letter of intent which is alleged to have given to the respondent No.3 by way of allotment of work quashment of which has been primarily sought for in this PIL.

5. On pointed query to the learned counsel representing the petitioner as regards the said document, it is stated at the bar that the same is not available with the learned counsel. Even no provision of law has been cited in support to the contentions made by the petitioner herein.

6. It is required that a person who approaches the Court seeking relief under PIL must furnish entire relevant documents/papers with entire facts and figures so as to allow the Court to lay its hands on those documents/particulars so relied upon for granting such relief. Any person, filing a PIL is expected to do some homework. Apparently it has not happened in this case.



7. That apart, we, in our considered opinion, do find no public interest in this application. Rather, it transpires that wholly private interest is in vogue in instant PIL and that too in the guise of seeking quashment of NIT, the petitioner has adopted a device to make a bargaining in the price amount of Rs.1600/- so fixed against payment of HSRP.

8. Since this petition has been filed as Public Interest Litigation, we feel it fit and proper to discern and highlight the scope of PIL. In a case of *Shri Sachidanand Pandey and another v. The State of West Bengal and others* reported in AIR 1987 SC 1109, while dealing with the present context the Apex Court (H, Khalid, J) in paragraphs 45 and 58 held as under: -

“45.This case goes by the name “Public Interest Litigation”. I wish to delineate the parameters of public interest litigation concisely, against the background of the facts of this case, so that this salutary type of litigation does not lose its credibility. Today public spirited litigants rush to Courts to file cases in profusion under this attractive name. They must inspire confidence in Courts and among the public. They must be above suspicions.”

“58. Public Interest Litigation has now come to stay. But one is led to thing that it poses a threat to Courts and public alike. Such cases are now filed without any rhyme or reasons. It is, therefore, necessary to lay down clear guidelines and to outline the correct parameters for entertainment of such petitions. If Courts do not restrict the free flow of such cases in the name of Public Interest Litigations, the traditional litigation will suffer and the courts of law, instead of dispensing justice, will have to take upon themselves administrative and executive functions.”

9. The above observations of the Supreme Court found support in another decision reported in (1999) 6 SCC 552, *Malik*



Brothers -vs- Narendra Dadhich and others, the Apex Court in the said case examining a PIL categorically indicated in paragraph - 2 as under: -

“2.a public interest litigation is usually entertained by a court for the purpose of redressing public injury, enforcing public duty, protecting social rights and vindicating public interest. The real purpose of entertaining such application is the vindication of the rule of law, effective access to justice to the economically weaker class and meaningful realization of the fundamental rights. The directions and commands issued by the courts of law in a public interest litigation are for the betterment of the society at large and not for benefiting any individual. But if the court finds that in the garb of a public interest litigation actually an individual's interest is sought to be carried out or protected, it would be the bounden duty of the court not to entertain such petition as otherwise a very purpose of innovation of public interest litigation will be frustrated. It is in fact a litigation in which a person is not aggrieved personally but brings an action on behalf of the downtrodden mass for the redressal of their grievance.”

10. In the case of *Sachidanand Pandey* (supra), the Apex Court emphasized the need for restrain on the part of the public interest litigants when they move the court. In the said case the Apex Court noticed that it posed a threat to court and public alike and that such cases were not filed without rhyme or reason. The need to restrict the free flow of such cases in the name of PIL has been emphasized, lest the traditional litigation suffers and the courts of law, instead of dispensing justice, will have to take upon themselves administrative and executive functions. In paragraph 60 of the judgment the Apex Court observed as follows: -

“60. 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 hardship 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.”

11. In another case reported in (2004) 3 SCC 363 (*Dr. B. Singh vs. Union of India and others*), the Apex Court dealing with the PIL relating to appointment of High Court judges, made the following observations in paragraph 14 and 15 of the judgment.

“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 a 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. In such case, however, the court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature. The court has to act ruthlessly while dealing with imposters and busybodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect.

15. Courts must do justice by promotion of good faith, and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. (See *State of Maharashtra v. Prabhu* and *A.P. State Financial Corpn. v. Gar Re-Rolling Mills*). No litigant has a right to unlimited draught on the court time and



public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. (See *Buddhi Kota Subbarao (Dr) v. K. Parasaran.*). Today people rush to courts to file cases in profusion under this attractive name of public interest. Self-styled saviours who have no face or ground in the midst of public at large, of late, try to use such litigations to keep themselves busy and their names in circulation, despite having really become defunct in actual public life and try to smear and smirch the solemnity of court proceedings. They must really inspire confidence in courts and among the public, failing which such litigation should be axed with a heavy hand and dire consequences."

12. The Supreme Court of India by Notification dated 1.12.1988 underlined the following guidelines to be followed in entertaining PIL: -

"Notification
Dated 1.12.1988
Supreme Court of India

Guidelines to be followed for entertaining letter/petitions received in this court as public interest litigation.

No petition involving individual/personal matter shall be entertained as a PIL matter except as indicated hereinafter.

Letters/petitions falling under the following categories alone will originally be entertained as Public Interest Litigation:

1. Bonded Labour matters
2. Neglected children
3. Non-payment of minimum wages to workers and exploitation of casual workers and complaints of violation of Labour Laws (except in individual cases).
4. Petitions from Jails complaining of harassment, for premature release and seeking release after having completed 14 years in Jail, death in Jail, release on personal bond, speedy trial as a right.
5. Petitions against police for refusing to register a case, harassment by police and death in police custody.



6. Petitions against atrocities on women, in particular harassment of bride, bride-burning, rape, murder, kidnapping etc.
7. Petitions complaining of harassment or torture of villagers by co-villagers or by police from persons belonging to Scheduled castes and Scheduled Tribes and economically backward classes.
8. Petitions pertaining to environment pollution, disturbances of ecological balance, drugs and food adulteration maintenance of heritage and culture, antiques, forest and wild life and other matters of public importance.
9. Petitions from plot victims.
10. Family pension.

All letter-petitions received in PIL cell will first be screened in the Cell and only such petitions as are covered by the above mentioned categories will be placed before a judge to be nominated by Hon'ble the Chief Justice of India for directions after which the case will be listed before the bench concerned. To begin with only one Hon'ble Judge may be assigned this work and the member increased to two or three later depending on the workload.

Cases falling under the following categories will not be entertained as public interest litigation and these may be returned to the petitioners or filed in the PIL Cell. As the case may be:

1. Landlord-Tenant matters.
2. Service matter and those pertaining to pension and Gratuity.
3. Complaints against Central/State Government Deptts. and local Bodies except those relating to item Nos. (1) to (10) above.
4. Admission to medical and other educational institutions.
5. Petitions for early hearing of cases pending in High Courts and Subordinate Courts.


In regard to the petitions concerning maintenance of the wife, children and parents, the petitioner may be asked to file petition under Sec. 125 Cr. P.C. or a suit in the Court of competent Jurisdiction and for that purpose to approach the nearest legal Aid Committee for legal aid and advice.

New Delhi
December 1, 1988."



13. In the case at hand, it is pertinent to mention that the entire process for having HSRP has been initiated by the specific direction of the Apex Court passed in the case of *Association of Registration Plates v. Union of India and others*, reported in (2005) 1 SCC 679. Be it mentioned herein that in the said case, before the Supreme Court an argument was also canvassed as regards the hike of cost of the plates to not less than Rs.2,000/- per pair by creating monopoly right in favour of joint-venture companies in foreign collaboration in contrast to the market price of Rs.800/- to Rs.900/- per pair by Indian manufacturers. This argument did not find any approval from the Supreme Court. Directing the State to implement the Scheme of High Security Plates effectively, in paragraph 35 and 44, it was observed as under: -

“35.The State as the implementing authority has to ensure that the scheme of high security plates is effectively implemented. Keeping in view the enormous work involved in switching over to new plates within two years for existing vehicles of such large numbers in each State, resort to “trial-and-error” method would prove hazardous. Its concern to get the right and most competent person cannot be questioned. It has to eliminate manufacturers who have developed recently just to enter into the new field. The insistence of the State to search for an experienced manufacturer with sound financial and technical capacity cannot be misunderstood. The relevant terms and conditions quoted above are so formulated to enable the State to adjudge the capability of a particular tenderer who can provide a fail-safe and sustainable delivery capacity. Only such tenderer has to be selected who can take responsibility for marketing, servicing and providing continuously the specified plates for vehicles in large numbers, firstly in the initial two years, and annually in the next 13 years. The manufacturer chosen would, in fact, be a sort of an agent or medium of the RTOs concerned for fulfillment of the statutory obligations on them of providing high security plates to vehicles in accordance with Rule 50. Capacity and capability are



the two most relevant criteria for framing suitable conditions of any notices inviting tenders. The impugned clauses by which it is stipulated that the tenderer individually or as a member of a joint venture must have an experience in the field of registration plates in at least three countries, a common minimum net worth of Rs.40 crores and either joint-venture partner having a minimum annual turnover of at least Rs.50 crores and a minimum of 15% turnover of registration plates business have been, as stated, incorporated as essential conditions to ensure that the manufacturer selected would be technically and financially competent to fulfil the contractual obligations, which, looking to the magnitude of the job, requires huge investment qualitatively and quantitatively."

"44. The grievance that the terms of notice inviting tenders in the present case virtually create a monopoly in favour of parties having foreign collaborations, is without substance. Selection of a competent contractor for assigning job of supply of a sophisticated article through an open-tender procedure, is not an act of creating monopoly, as is sought to be suggested on behalf of the petitioners. What has been argued is that the terms of the notices inviting tenders deliberately exclude domestic manufacturers and new entrepreneurs in the field. In the absence of any indication from the record that the terms and conditions were tailor-made to promote parties with foreign collaborations and to exclude indigenous manufacturers, judicial interference is uncalled for."

14. It is also noticed herein that the petitioner's case herein does not fall under any of the guidelines prescribed by the Supreme Court as quoted in paragraph 12 hereinabove.

15. That being the position, having regard to the settled law as quoted above as well as upon meticulous scrutiny of the contentions and submissions advanced on behalf of the parties, we are of the view that the instant PIL is bereft of any merit and the same stands accordingly dismissed.

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16. Having considered the facts of the case, there shall be no order as to costs.

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Judge

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Chief Justice.