

RESERVED**WRIT PETITION NO.8596 (MB) OF 2012**

Dr. Nutan Thakur	---	Petitioner
	Versus	
Union of India, through Secretary, Prime Minister's Office, New Delhi.	---	Respondent

Hon'ble Uma Nath Singh, J.
Hon'ble Virendra Kumar Dixit, J.

(Per Uma Nath Singh, J.)

We have heard learned counsel for parties and perused the pleadings of writ petition.

The petitioner herein, who claims to be a social activist and freelance journalist, has filed this Public Interest Litigation petition with a prayer for issuance of a writ of mandamus directing the Union of India through the Secretary to the Prime Minister to decide her representation dated 09.10.2012 on merit, and as consequential action, hold inquiry into the transactions of financial impropriety said to have been alleged by two persons namely one who proclaims himself to be a civil activist and the other an advocate of the Supreme Court of India against one Shri Robert Vadra who is said to have connections in the political party which is now in power in Centre as well as in some States. The informations forming the basis of allegations as made in the writ petition appear to flow from some disclosures made by the aforesaid two persons which primarily seem to relate to some business/property transactions between the companies of Shri Robert Vadra and the company called 'the DLF', which are said to be incorporated and having their registered offices outside the State of U.P.

During the course of hearing the entire thrust of arguments of learned counsel for the petitioner has centred only around the political connections of Shri Vadra. During the course of arguments, serious efforts were made to show that Shri Vadra was able to acquire his assets only because of such connections. While referring to the disclosures as said to have been made by the aforesaid two members of the Civil Society, the petitioner has also quoted the statement of the Finance Minister, Government of India, which had perhaps appeared in some newspapers as follows:

"I think those who made their allegations have made their statement, the company concerned has made a statement and the individual concerned has made a statement. Now beyond that, I

have no facts and unless there is a specific allegation of quid pro quo or corruption, I am afraid private transactions cannot and ought not to be allowed to question on the basis of imputations and insinuations.”

However, the petitioner has also admitted that Shri Robert Vadra and the DLF company have given their explanations while brushing off the allegations as malafide, mischievous and misleading. Nonetheless, according to her, there are still some questions which have remained unanswered, therefore, she has filed the writ petition and made the prayers for directions. She appears to have made these prayers due to her apprehension that her representation submitted to the respondent may not get proper consideration till some suitable directions are issued in this writ petition.

Contrary to the aforesaid apprehension of the petitioner, the Secretary to the Prime Minister, being the sole respondent, has responded quickly (on the basis of service of a copy of Writ Petition in advance) and taken preliminary objections to the maintainability of this writ petition on an affidavit sworn by a Senior Officer in the rank of Joint Secretary, Shri Dheeraj Gupta, posted in the Prime Minister's office. The preliminary objections which are taken on the basis of settled legal premises, inter-alia, mention that the petition filed on 09.10.2012 is ex-facie not in good faith and the date of the representation and the filing of the petition being the same day, prima facie, shows that the petition is driven by a desire for publicity and seems to be actuated by political considerations rather than public interest; that the petition is based on the contents of reports in a section of the media and the allegations/insinuations contained therein, (which have been specifically controverted by the entities/persons concerned) raise disputed questions of fact involving private citizens/entities in purely commercial transactions; that it is also obvious that the petitioner has no knowledge of the truth or otherwise of the imputations and allegations contained in the various news reports and articles; that the petitioner has not applied her mind nor has she exercised any due diligence as to the factual and legal basis of the petition; that the petition itself shows that certain broad allegations were made which were incorporated in the Press Release, these were controverted by a statement issued immediately thereafter, and whilst referring to the said response, the petitioner has made no assertion in respect thereof; that it would appear in the circumstances that the allegations made are false, vexatious and based on hearsay; and that the petitioner is not an expert on company affairs, corporate matters, finance and economics and nevertheless seeks directions on unsubstantiated bases.

It is also urged in the preliminary objections that the petition is premised on presumed "impropriety" without even an averment much less upon a demonstrated infraction of any law, thus, the petitions cannot be filed to besmirch reputations and for political motives; that the petitioner herself is not personally aggrieved by any of the alleged actions and has no locus standi to prefer this petition; that the processes of PIL and the powers of the court to issue directions to public authorities cannot be resorted to in relation to purely commercial business transactions between private persons/entities, particularly when no illegality of any kind is demonstrated even on a prima facie basis; and that mandamus cannot be sought without disclosing a legal right or an infringement of specific statutory or constitutional provisions or non performance of legal obligation.

The other pleas taken in the objections are that the public interest petition cannot be used for fishing and roving enquiries against private citizens with respect to their private business transactions particularly when based entirely upon media reports, without an independent application of mind and due diligence by the petitioner, and that the answering respondent has been erroneously arraigned as a party in this petition, no cause of action is disclosed against him, the office of the respondent cannot be used for ordering inquiries against private citizens based purely on newspapers reports and disputed facts and the petitions received in the office of the Prime Minister are dealt with suitably as per settled practice.

In the rejoinder affidavit to the preliminary objections the petitioner inter alia has contended: (i) that none of the submissions made in the affidavit on behalf of the respondent holds the grain of truth to the smallest extent; (ii) that if the petition relates to private citizens/entities in purely commercial transactions, then the highest executive office should not have taken so much interest in this matter and sent Sri Mohan Parasaran, learned Additional Solicitor General of India, to plead the matter before this Court when there is a panel of Lawyers including Sri Ashok Kumar Nigam, Additional Solicitor General and Sri I.H. Farooqui, Assistant Solicitor General to represent Union of India before the Lucknow Bench; (iii) that the Prime Minister's office should not have shown the anxiety and acted in hurry to file objections to the maintainability of the petition; (iv) that on the last date of hearing Sri Mohan Parasaran, Learned Additional Solicitor General of India should not have mentioned the matter before this Court for early hearing when in majority of its cases the Union of India hardly seems to be sincerely interested to pursue, and (v) that there is a great possibility of presence of element of quid-pro-quo in entering the transactions in question.

As regards the petitioner's locus standi, great stress is laid by learned counsel in Para 2 of the writ petition where she has stated: "She presents this writ petition in her individual capacity as an affected party who wants suitable action to be taken as per her representation sent to the Hon'ble Prime Minister of India." It appears that the petitioner, probably, wants to say that since she has submitted representation to the Prime Minister's office, for appropriate order and suitable action, she has a locus standi to file the writ petition.

Annexure No. 1, the charter of allegations, and Annexure No. 2, the point-wise reply thereto by the DLF, it is argued, are sufficient enough to justify filing of this petition before this Court.

Learned counsel for petitioner during the course of hearing only reiterated the submission made in the writ petition as well as in the rejoinder and tried to highlight that Shri Vadra has made a huge capital out of his political connections, particularly, in respect of the alleged transactions between his companies and the DLF.

Shri Mohan Parasharan, learned Additional Solicitor General of India, appearing for the respondent contended that the writ petitioner has not been able to make out any case so as to warrant any interference by this Court in exercise of extraordinary jurisdiction under Article 226 of Constitution of India and on petitioner's own showing the writ petition is misconceived and also liable to be dismissed as not maintainable in the light of settled principles of law. According to Shri Parasharan, a statement of fact as contained in newspaper is mere hearsay. At best, it can only be a second hand secondary evidence. A petition based on unconfirmed news reports without verifying their authenticity should not be entertained. It is also a submission of learned Additional Solicitor General that a Public Interest Litigation cannot be entertained on the basis of speculative foundation and premises in order to make a fishing and roving enquiry. There must be sufficient material in the petition on the basis of which the Court may proceed. A litigant cannot approach the Court to get a chance to establish his or her claim. It is also a contention on behalf of the respondent that a person who raises a grievance must show that he/she has suffered legal injury. Hon'ble the Apex Court as well as this High Court has consistently cautioned against entertaining Public Interest Litigation filed by unscrupulous person for achieving oblique motive on the basis of wild and reckless allegations. And finally it was also pleaded that a writ of mandamus cannot be sought without disclosing a legal right or an infringement of specific statutory or constitutional provisions or non-performance of legal obligation.

Having given our anxious consideration to the aforesaid arguments and on the examination of pleadings, we do not find that the entities/parties in question entered the alleged transactions within the territorial jurisdiction of this Court and/or they reside in the State of U.P., and/or the lands and corpuses of transactions are situated herein. It is not even said anywhere that Mr. Vadra or DLF company has any connection with the State of U.P. But that nevertheless, since the petitioner claims on affidavit to be aggrieved by non-consideration of her representation and there is no any preliminary objection taken on that count to the exercise of writ jurisdiction by this Court by the respondent (the Secretary to the Prime Minister), who, besides the above, while functioning as a Secretary to the Government of India shall be liable to our jurisdiction, we proceed to examine the material particulars on record to find out as to whether the relief prayed for can be granted in the premises set out in this petition. The High Court being a Constitutional Court, there can not be a ground of lack of inherent jurisdiction to prevent the exercise of extraordinary jurisdiction for issuance of appropriate writ, order or direction under Article 226 and 227 of the Constitution of India, particularly, in such cases like the one in hand where Union of India is a party and it has not taken any plea of objection on any of the above grounds to the exercise of jurisdiction by this Court. In that context, we can profitably refer to the ratios of following two decisions of Hon'ble the Apex Court which though have been rendered in the cases of challenge to jurisdiction at the appellate stage, yet can be relied upon to seek guidance on the point in question.

In the pronouncement made by their Lordships of Hon'ble the Supreme Court in the matter of **Kedar Shashi Kant Des Pandey vs. Bhor Municipal Council and Others** reported in **(2011)2 SCC 654**, while placing reliance on an earlier decision of the Hon'ble Court in the case of **Remington Rand of India Ltd. vs. Thiru R. Jambu Lingam** reported in **1975(3) SCC 254: 1974 SCC (L&S) 536**, it has been held that the plea of lack of jurisdiction cannot be taken at appellate stage after having submitted to the jurisdiction of the authority in earlier proceedings.

Similarly in another judgment rendered in the case of Hindustan Petroleum Corporation Ltd. vs. Super Highway Services reported in (2010) 3 SCC 321, it has been articulated by Hon'ble the Apex Court that by filing appeal against the order of learned Single Judge, the petitioner also submitted to the

jurisdiction of writ court without any objection, therefore, it too is late now to raise such objection. In the instant case, as noticed hereinabove, the respondent being liable to our jurisdiction has submitted to it without any qualification.

The petitioner has claimed locus standi on the basis of her representation sent to Union of India represented through the Secretary to the Prime Minister wherein she has prayed for taking suitable action against the transacting private entities to the business deals in question. In paragraph 2 of the writ petition, it is stated as:

“2. That the petitioner is a social activist and freelance journalist having an urge to positively contribute to the society in all possible ways. She presents this writ petition in her individual capacity as an affected party who wants suitable action to be taken as per her representation sent to the Hon'ble Prime Minister of India.

The above plea has been reiterated and explained in paragraph 8 of the rejoinder affidavit in these terms:

“8. That as regards the petitioner's locus standi, she had made it clear in Para 2 of the writ petition itself - “She presents this writ petition in her individual capacity as an affected party who wants suitable action to be taken as per her representation sent to the Hon'ble Prime Minister of India.” What it means is that she had sent a representation dated 09/10/2012 in this matter where she had prayed an enquiry into the allegations made against Sri Robert Vadra and the DLF company as regards the allegations made by Sri Arvind Kejriwal and Sri Prashant Bhushan because despite the specific denials by Sri Robert Vadra and the DLF company, many a questions are still completely unanswered and hence the petitioner had come to this Hon'ble Court in the capacity of the person who has sent a representation to the Hon'ble Prime Minister's office and wanted that suitable action be taken as regards her representation. Thus the petitioner's locus standi is as the sender of the representation who wants suitable and appropriate action as regards her representation.”

The petitioner has filed her affidavit in support of the petition but it has to be remembered that the contents of an affidavit must conform to the requirements of Order 19, Rule 3 of CPC. The affidavit of the petitioner on reproduction would read as:

“I, Nutan Thakur, aged about 39 years, w/o Sri Amitabh Thakur, R/o 5/426, Viram Khand, Gomti Nagar, Lucknow, religion Hinduism, M.A., Ph. D, profession- Social Activist and Journalist, the deponent, do hereby solemnly affirm and state on oath as under-

1. That the deponent is the sole petitioner in the above noted petition and as such she is fully conversant with the facts and circumstances of the case deposed to hereunder.

2. That the contents of the paragraphs 1 to 20 of the writ petition are true to my personal knowledge, based on documents and records and believed to be true or are based on legal advice.

3. That the contents of Annexure No.01 to 04 of the writ petition are true copies of their original documents.

Place Lucknow

Dated 09/10/2012

(Nutan Thakur)

Deponent

Verification

I the deponent above named do hereby verify that the contents of paragraphs 1 to 3 of above this affidavit are true and correct to my knowledge and belief. No part of it is false and nothing material has been concealed. So help me God.

Signed and verified this the 9th day of October 2012 at Lucknow.

Deponent”

Similarly, the deponent-petitioner has also verified the rejoinder affidavit in the following terms:

“I, the deponent above named, do hereby verify that the contents of paragraphs 1 to 12 above this Affidavit are true and correct to my knowledge and belief. No part of it is false and nothing material has been concealed. So, help me God.

Signed and verified this the 29 day of Nov. 2012 at Lucknow.

Deponent”

Their Lordships of Patna High Court in an old judgment reported in **1924 Patna 312 (Chandrika Prasad Singh and others vs. Hira Lal and others)**, has held :

“Where an affidavit states that the information deposed to is true to the best of the deponent's knowledge, information and belief, the deponent must state how much of the affidavit is sworn to from his own knowledge and how much is merely sworn to from information which he believes to be true. If the affidavit swears to certain facts as are merely within the belief of the deponent then it must be taken that the statements of facts are matters within his own knowledge and not merely matters of belief only.”

This Allahabad High Court also in the case of **L.H. Sugar Factories and Oil Mills (Pvt.) Ltd. vs. State of U.P. & Ors.** reported in **AIR 1962**

Allahabad 70 has held that if the matters referred to in the affidavit do not ordinarily concern the deponent and it is doubtful that his verification is true, in that case the affidavit being worthless, the petition can be rejected on this ground alone.

In its decision in the case of **Barium Chemicals Ltd. & another vs. Company Law Board and others** reported in **AIR 1967 SUPREME COURT 295**, Hon'ble the Apex Court has observed:

"It is true that in a case of this kind it would be difficult for a petitioner to have personal knowledge in regard to an averment of mala fides, but then where such knowledge is wanting he has to disclose his source of information so that the other side gets a fair chance to verify it and make an effective answer. In such a situation, this Court had to observe in 1952 SCR 674: AIR 1952 SC 317, that as slipshod verifications of affidavits might lead to their rejection, they should be modelled on the lines of O. XIX, R.3 of the Civil Procedure Code and that where an averment is not based on personal knowledge, the source of information should be clearly deposed. In making these observations this Court endorsed the remarks as regards verification made in the Calcutta decision in Padmabati Dasi v. Rasik Lal Dhar, (1910) ILR 37 Cal. 259."

In another judgment in the matter of **M/s Sukhwinder Pal Bipan Kumar and others vs. State of Punjab and others** reported in **(1982) 1 Supreme Court Cases 31**, their Lordships of Hon'ble the Apex Court have laid down:

"Order 19, Rule 3, CPC, 1908 requires the deponent to disclose the nature and source of his knowledge with sufficient particularity."

In a later judgment of Hon'ble the Apex Court in the matter of **Shivajirao Nilangekar Patil vs. Dr. Mahesh Madhav Gosavi and others** reported in **(1987) 1 Supreme Court Cases 227**, the position has been further clarified as extracted below:

"This was laid down as early as 1909 by Jenkins, C.J. and Woodroffe, J. in Padmabati Dasi v. Rasik Lal Dhar, [ILR XXXVII Calcutta 259] where the Division Bench of the Calcutta High Court observed that the provisions of Order XIX, rule 3 of the Code of Civil Procedure, must be strictly observed: every affidavit should clearly express how much is a statement

of the deponent's knowledge and how much of the statement was in his belief, and the grounds of belief must be stated with sufficient particularity. This has been followed more or less universally by courts in matters where reliance is placed on affidavits. This view has been reiterated by this Court in The State of Bombay v. Purushottam Jog Naik [1952] SCR 674.]”

In the affidavit accompanying the writ petition, the deponent-petitioner has stated that paras 1 to 20 are true to her personal knowledge based on documents and records and are believed to be true or are based on legal advice. In para 3 of the affidavit, she has stated that the contents of annexure nos. 1 to 4 of the affidavit are true copies of their original documents. Thus, the entire contents of the writ petition which are contained and embodied in para 1 to 20 of the writ petition are true to personal knowledge of the deponent-petitioner which, according to her, is based on documents and records in form of annexures 1 to 4 (as no any other document has been referred to or disclosed in the affidavit forming the ground for instituting the instant proceedings). As such the affidavit gives the impression that the deponent-petitioner has mentioned the facts of the writ petition on the basis of her personal knowledge and they are not merely the matter of belief. But in the same breath she has also stated: “or are based on legal advice”. Moreover, the subject matter of the writ petition also does not ordinarily concern the deponent-petitioner because she is not a party to the transactions nor is it clear as to how she has suffered any legal injury as a result of the transaction or how the commercial deals between two private entities are in violation of any law. Moreover, she is also not specific and definite in the affirmation and the verificatory statement of affidavit. The deponent does not claim any specialized knowledge in the field of commercial matters nor has she any definite and clear knowledge about the nature and the legal status of documents as contained in the annexures, nor has she any personal knowledge as how they have come in possession of the persons who are said to have released them to media. Therefore, they are not worth relying for filing of this writ petition. Resultantly, we can say that the petitioner has not made the very similitude or authentic statements in the contents as well as the verification clause of her affidavit with sufficient particularity so as to bring it in conformity with the requirements of Order 19 rule 3 C.P.C. as well as the judicial pronouncements (supra) on this point. In that event, the affidavit filed in support of the writ petition can be said to be

worthless and thus deserves to be rejected on that ground itself. The status of the statement made in the verification clause of the rejoinder affidavit is not different, therefore, the writ petition with the rejoinder can be rejected for these reasons alone.

Besides, it may be noticed that if the source of information is press release, it cannot be relied in the absence of affidavits of the persons who have released them to the press as also that of the owner, the editor and/or the correspondent who contributed the news item to the electronic/print media.

In the absence of such affidavit, the contents of the affidavit of the deponent-petitioner filed in support of the writ petition deserves to be outrightly rejected. The press items in question are not asserted to have been authenticated by a public officer or made available for public reference and used by any public office nor published under the authority of a public officer. Thus, they do not possess the attributes of public document, therefore, it would be necessary that the accompanying annexures forming the basis of filing this writ petition be supported by the affidavits of media persons as well as the public activists as aforesaid who are claimed to be in possession of such information. Since their affidavits are conspicuous by absence, the averments made in the writ petition as also the statements on affirmation in the affidavit do not carry any evidentiary value and as such can be safely rejected.

Hon'ble the Apex Court in a judgment reported in (1998) 3 SCC 319 [Laxmi Raj Shetty and another vs. State of Tamil Nadu] has held that the Court can not take judicial notice of the facts stated in a news item published in a newspaper. A newspaper is not one of the documents referred to in Section 78(2) of the Evidence Act and thus by a news item an allegation of fact cannot be proved. The presumption of genuineness attached under Section 81 of the Act to a newspaper report cannot be treated as proved of the facts reported therein. A statement of fact contained in a newspaper is merely hearsay and therefore inadmissible in evidence unless proved by evidence aliunde by the maker of the statement appearing in court and deposing to have perceived the fact reported. Reliance has been placed on the judgment of Samant N. Balkrishna vs. George Fernandez (1969) 3 SCC 238 in deciding this matter. In Samant N. Balkrishna's case, it has been held that a newspaper item without any further proof of what had actually happened through witnesses is of no value. It is at best a second hand secondary evidence. It is well known that reporters collect information and pass it on to the editor who edits the news item and then publishes it. In this

process the truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible.

Another authority that can be referred on this point is *S.A. Khan vs. Ch. Bhajan Lal and another* reported in (1993) 3 SCC 151. It has been decided in the context of prayer for initiating contempt proceedings. Hon'ble the Apex Court held that the newspaper report is only a hearsay evidence that cannot be relied upon for initiating contempt proceedings. The Court thus declined to issue suo-motu contempt notice as the facts did not disclose any compelling reason. The Court while discussing the scope of Section 63 reiterated the views taken in the judgment of *Laxmi Raj Shetty's* and *Samant N. Balkrishna's* cases (*supra*).

Now coming to the question of maintainability of this Public Interest Litigation, in a catena of decisions, in particular, namely [(i) **Ashok Kumar Pandey vs. State of West Bengal (2004) 3 SCC 349**, (ii) **Divine Retreat Centre vs. State of Kerala (2008) 3 SCC 542** and (iii) **State of Madhya Pradesh vs. Narmada Bachao Andolan (2011) 7 SCC 639**], Hon'ble the Apex Court has held that a Public Interest Litigation cannot be entertained on the basis of speculative foundation and premises so as to make a roving inquiry. For filing such petition, there must be enough material providing basis before the Court to proceed further. The litigant also cannot claim to have chance to establish his or her claim.

Hon'ble the Apex Court as well as this High Court has consistently cautioned against entertaining Public Interest Litigation filed by unscrupulous persons for achieving oblique motive on the basis of wild and reckless allegations. This view has been taken, inter-alia, in the following judgments: **Sachidanad Pandey vs. State of West Bengal (1987) 2 SCC 295**; **Ashok Kumar Pandey vs State of West Bengal (2004)3 SCC 349**; **Dattaraj Nathuji Thaware Vs State of Maharashtra (2005) 1 SCC 590**; **R & M Trust Vs Kormangala Residents Vigilance Group (2005) 3 SCC 91**; **Kusum Lata Vs Union of India (2006) 6 SCC 180**; **State of Uttaranchal Vs Balwant Singh Chaufal (2010) 3 SCC 402**; **P. Seshadri Vs S. Mangati Gopal Reddy (2011) 5 SCC 484**, and Judgment dated 8.11.2012 of Hon'ble Supreme Court in **C.A. No. 7728 of 2012-Ayaaubkhan Noor Khan Pathan Vs State of Maharashtra**.

It is also a settled law that a writ of mandamus cannot be sought without disclosing a legal right or infringement of any specific statutory or constitutional provisions or non-performance of legal obligations as have been held in the decisions by their Lordships of Hon'ble the Apex Court in the cases of **Chingulpet Bottlers Vs Majestic Bottling Company** reported in **(1984) 3 SCC 258; AIR 1984 SC 1030**, and

Director of Settlement, A.P. Vs M.R. Apparao (2002) 4 SCC 638 = AIR 2002 SC 1598.

The petitioner has thus utterly failed to make out a case in terms of the ratios of aforesaid judgments so as to seek the indulgence of this Court for exercising extraordinary jurisdiction under Article 226 of the Constitution of India in this Public Interest Litigation. There is no proper affirmation and verification of her affidavit filed in support of the writ petition as required vide the provisions of Order 19 rule 3 C.P.C. The social activists who are said to have released the news items have not come forward to file their affidavits to prove the authenticity of the documents sought to be placed reliance by the petitioner. So is the case with the media persons who have printed or telecast the news items. There is no positive assertion by the petitioner regarding the infringement of her any legal right, nor is there any allegation of violation of any specific statutory or constitutional provisions. There is also no legal obligation upon the respondent as claimed by the petitioner to hold inquiry of any kind into the transactions said to have been entered between two private entities. In this background, we are also not supposed to pierce the corporate veil to make roving inquiry as to the nature of transactions and the attending circumstances so as to find out the element of quid-pro-quo as alleged in this petition. We are thus not inclined to entertain this Public Interest Litigation which appears to have been filed with some oblique motive. That being so, there is absolutely no merit and hence it deserves to be dismissed while recording a note of caution against filing of such petitions.

This Petition is, accordingly, dismissed.

March 07, 2013

(Virendra Kumar Dixit, J.)

(Uma Nath Singh, J.)

Vijay/Irfan/

A. Katiyar/Rizvi