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W.P. No. 23017 (W) of 2018

**Shiladitya Barma
Versus
The State of West Bengal & Ors.**

Mr. Debapriya Chatterjee

...For the Petitioner.

Mr. Amitesh Banerjee

Mr. Akash Dutta

...For the State.

This is an application filed under Article 226 of the Constitution of India by one Shiladitya Barma, claiming to be a practising Advocate of this High Court with six years standing at the Bar. This writ application had been filed by way of a "Public Interest Litigation". The prayers made in this writ application are set out below :-

"In the above facts and circumstances Your Petitioner prays Most Humbly that Your Lordships will be graciously pleased to :

- a) Grant leave to your petitioner under Rule 12 of the Rules of this Hon'ble Court relating to applications under Article 226 of the Constitution of India read with Rule 57(a) thereof to move the present writ petition in a representative capacity representing the people of masculine and third genders of the State of West Bengal.**
- b) Issue a Writ of Mandamus commanding the respondents and each of them and/or their concerned authorities and all the authorities, institutions, agencies, offices, and persons of the State of West Bengal to observe and ensure that the persons of masculine and third gender of the State of West Bengal are duly protected from the acts of sexual contacts which will include but not limited to the acts as has more specifically been mentioned in paragraph no. 3(n) hereinabove and/or sexual harassments and/or sexual abuses, which will include but not limited to the acts as more specifically been mentioned in paragraph nos. 3(k), (l) and (m) hereinabove and like acts.**
- c) Issue a Writ of Mandamus commanding the respondents and each of them and/or their concerned authorities and all the authorities,**

institution, agencies, offices and persons of the State of West Bengal to observe and ensure that in terms of the acts of sexual harassments of and non-consensual sexual contacts with the people of masculine and third genders of the State of West Bengal which will include but not limited to the acts as has more specifically been mentioned in paragraph nos. 3(k), (l,) and (m) and 3(n) hereinabove respectively and the like acts, proper steps, and procedures are taken for the resolution, settlement and/or prosecution and also all other steps required for doing complete justice to the said victims are duly been taken, in the event of the said sexual harassments and/or non-consensual sexual acts with them, as mentioned hereinabove.

- d) Issue directions upon the respondents and each of them and/or their concerned authorities and all the authorities, institutions, agencies offices, and persons of the State of West Bengal to observe and ensure that the persons of masculine and third gender of the State of West Bengal are duly protected from the acts of sexual contacts which will include but not limited to the acts as has more specifically been mentioned in paragraph no.3(n) hereinabove and/or sexual harassments and/or sexual abuses, which will include but not limited to the acts as more specifically been mentioned in paragraph nos. 3(k)(l) and (m) hereinabove and the like acts.
- e) Issue directions upon the respondents and each of them and/or their concerned authorities and all the authorities, institutions, agencies, offices, and persons of the State of West Bengal to observe and ensure that in terms of the acts of sexual harassments of and non-consensual sexual contacts with the people of masculine and third genders of the State of West Bengal which will include but not limited to the acts as has more specifically been mentioned in paragraph nos. 3(k), (l) and (m) and 3(n) hereinabove respectively and the like acts, proper steps, and procedures are taken for the resolution, settlement and/or prosecution and also all other steps required for doing complete justice to the said victims are duly been taken, in the event of said sexual harassments and/or non-consensual sexual acts with them, as mentioned hereinabove.
- f) Issue a Writ of/in the nature of Prohibition prohibiting the respondents and each of them and/or their concerned authorities and all the authorities, institutions, agencies, offices, and persons of the State of West Bengal to deal with the said situations negligently and/or treating the situations as a joke and humiliating those persons of male and third gender, who are victimized and/or harassed by sexual harassments and/or sexual contacts;
- g) Pass Appropriate Direction(s)/Order(s)
- h) Issue Rule Nisi in terms of prayers b),c),e),f) and g) above;

- i) Pass an interim order directing the respondents and all other authorities, institutions, agencies, offices, and persons of the State of West Bengal to forthwith take up the task of dealing with the matters as mentioned in paragraph nos. 3(k),(l),(m), and (n) and the like matters seriously and also for taking proper steps in terms of the said incidents which might get reported to them.**
- j) Pass ad interim orders in terms of prayers b),c),d),e),f),g),h) and I) above.**
- k) Pass suitable orders as to costs of and/or incidental to this application including legal expenses;**
- l) Pass such other and/or further order(s)/direction(s) as may seem fit and proper.”**

Appearing on behalf of the petitioner, it is submitted by Mr. Debopriya Chatterjee, learned Advocate, that it is an absolute misconception that acts of making physical contact, advances involving unwelcome, explicit sexual overtures, making sexually colored remarks, making a demand for sexual favours or showing pornography without consent do not happen to males and persons of the third gender. According to him if a person belonged to the masculine or third gender, it was difficult for them to manage to get out of such an instance of sexual abuse. He submits that there are innumerable situations where perpetrators succeed in harassing males and third gender persons and make sexual overtures without their consent and thereby victimise them. He further submits that there are possibilities of assault and use of criminal force on persons of masculine or persons of the third gender with the intentions of desiring him or compelling him to be naked etc. It is further submitted by him that there are many instances where the offenders by using their power and position manage to take advantage of the victim's helplessness economic weakness, disability and necessity and thereby harass, abuse, assault and

victimise them sexually and it is further strongly submitted that it was not at all a correct perception that a person who belonged to the masculine or third gender could always protect himself from being sexually abused and/or assaulted and/or being forced criminally. According to him, when a sexual act is done to someone without the person's will and/or consent, forcefully and, if the said act and/or physical contact makes the person uncomfortable, such physical contact could be termed as sexual in nature and it ought to come under the purview of "Sexual Harassments" and/or "Non-Consensual Sexual Contacts". It is further submitted by him that it is also violation of human rights and right to privacy to secretly watch males and transgender who were engaged in private acts in such places where they would usually have the expectation of not being observed, whether by the perpetrator or by any other person at the behest of the perpetrator. He submitted that the main thrust of his argument is that even males and persons of the third gender were victims of sexual abuse and sexual harassment but the law enforcing agency have failed to ensure protection of such victims.

Reliance is placed by Mr. Chatterjee on the averments made in subparagraphs (k), (l) and (m) of paragraph 3 of this writ application "at Pages 13 to 19 of this Writ Application".

Having heard the learned counsel appearing for the petitioner as also after considering the facts and circumstances of the case, we want to have a cursory

look on Rule 56 of the Rules of High Court at Calcutta relating to application under Article 226 of the Constitution of India, which is quoted below :

“56. Definition of Public Interest Litigation:- Public Interest Litigation shall include a litigation the subject matter of which is a legal wrong or a legal injury caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is, by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, and for redressal of which any member of the public not having any personal interest in the subject matter presents an application for an appropriate direction, order or writ in this Court under Article 226.

Notwithstanding anything contained above, in any appropriate case, though the petitioner might have moved a Court in his private interest and for redressal of personal grievances, the Court in furtherance of the public interest involved therein may treat the subject of litigation in the interest of justice as a public interest litigation.”

Keeping in mind the aforesaid provision of Rule 56 of the Rules of High Court at Calcutta, we are of the opinion that according to the settled principles of law in a Public Interest Litigation, the litigant has to lay a factual foundation of the statement made in the writ application and such information furnished by him should not be vague and indefinite and at the same time, the Court must be aware of the possibility to approach the Court to have a fishing and roving enquiry.

Reference may be made to the decision of **Narmada Banchao Andolan – versus- State of Madhya Pradesh & Ors., reported in (2011)7 SCC 639** and the relevant portion of the above decision is quoted below :

“13. Strict rules of pleading may not apply in PIL, however, there must be sufficient material in the petition on the basis of which the court may proceed. The PIL litigant has to lay a factual foundation for his averments on the basis of which such a person claims the reliefs. The information furnished by him should not be vague and indefinite. Proper pleadings are necessary to meet the requirements of the principles of nature justice. Even in PIL, the litigant cannot approach the court to have a fishing or roving enquiry. He cannot claim to have a chance to establish his claim. However, the technicalities of the rules of pleading cannot be made applicable vigorously. Pleadings prepared by a layman must be construed generously as he lacks the standard of accuracy and precision particularly when a legal wrong is caused to a determinate class. (Vide a. Hamsaveni v. State of T.N., Ashok Kumar pandey v. State of W.B., Prabir Kumar Das v. State of Orissa and A. Abdul Farook v. Municipal Council, Perambalur.)”

In the instant case, we repeatedly asked Mr. Chatterjee to draw our attention towards a single instance of harassment of a person of the masculine gender or third gender as stated in his aforesaid submissions and consequent failure on the part of the machineries created under the law of the land to deal with complains of such offences by the victims.

In spite of repeated requests by this Court to the petitioner to point out the reason for inability of the persons/victims concerned to approach the law enforcing agencies and other authorities for their protection and/or for taking action against their offenders, the petitioner failed to meet the query of the Court.

We are constrained to say that the learned advocate not only failed to draw our attention to a single instance, but he instead started making submissions on the theoretical issue, apart from drawing our attention towards some publications in the news papers which are attached to this writ application.

According to the settled principles of law as decided in the matter of ***Kusumlata -versus- Union of India & Ors., reported in (2006) 6 SCC 180,*** Newspapers' reports do not constitute evidence. A petition based on unconfirmed news report without verifying their authenticity should not normally be entertained. The relevant portion of the above decision is quoted below :

“17.....As observed by this Court in several cases, newspaper reports do not constitute evidence. A petition based on unconfirmed news reports, without verifying their authenticity should not normally be entertained. As noted above, such petitions do not provide any basis for verifying the correctness of statements made and information given in the petition. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforesaid so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts.”

Needless to point out that our attention has not been drawn towards a single sentence from the pleading of this writ application that the newspaper's reports which have been relied upon by the petitioner, the authenticity have been verified by him in any way.

So, this Court is not in a position to proceed on the basis of the submissions made before us from the Bar, as the pleadings are vague and lacking in material particulars. With regard to the question of undertaking the research work, we find that the petitioner is more concerned with the theoretical aspect of the matter and he wants to make submissions to prove his knowledge on the subject, instead of exposing specific cases of the victims he is representing and those who are not in a position to approach the Court of law. In the averments there is nothing to show that the victims of such sexual harassment had approached the law enforcing agencies but there was total non-cooperation on behalf of the State machinery. In this regard we may recollect the settled principles of law to the effects that a person seeking to espouse a public cause should not rush to the Court without undertaking any research, even if he is qualified or competent to raise such issue. The Hon'ble Supreme Court gave a caution in the matter of **S.P. Anand -vs- H.D. Deve Gowda & Ors., reported in AIR 1997 S.C. 272**; that a good cause can be lost if the petitions are filed on half-baked information without proper research or by persons, who are not either qualified and/or competent to raise such issue as the rejection of such petition may affect third party right and the relevant portion of the same is quoted below.

“18. Before we part, we cannot help mentioning that on issues of constitutional laws, litigants who can lay no claim to have expert knowledge in that field should refrain from filing petitions, which if we may say so, are often drafted in a casual and cavalier fashion giving an extempore appearance not having had even a second look. This is the impression that one gets on reading the present petition. It is of utmost importance that those who invoke this Court's jurisdiction 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. Such a litigant

must not succumb to spasmodic sentiments and behave like a knight-errant roaming at will in pursuit of issues providing publicity. He must remember that as a person seeking to espouse a public cause, he owes it to the public as well as to the Court that he does not rush to Court without undertaking a research, even if he is qualified or competent to raise the issue. Besides, it must be remembered that a good cause can be lost if petitions are filed on half-baked information without proper research or by persons who are not qualified and competent to raise such issues as the rejection of such a petition may affect third party rights. Lastly, it must also be borne in mind that no one has a right to the waiver of the locus standi rule and the Court should permit it only when it is satisfied that the carriage of proceedings is in the competent hands of a person who is genuinely concerned in public interest and is not moved by other extraneous considerations. So also the Court must be careful to ensure that the process of the Court is not sought to be abused by a person who desires to persist with his point of view, almost carrying it to the point of obstinacy, by filing a series of petitions refusing to accept the Court's earlier decisions as concluding the point. We say this because when we drew the attention of the petitioner to earlier decisions of this Court, he brushed them aside, without so much as showing willingness to deal with them and without giving them a second look, as having become stale and irrelevant by passage of time and challenged their correctness on the specious plea that they needed reconsideration. Except for saying that they needed reconsideration he had no answer to the correctness of the decisions. Such a casual approach to considered decisions of this Court even by a person well-versed in law would not be countenanced. Instead, as pointed out earlier, he referred to decisions having no bearing on the question, like the decisions on cow slaughter cases, freedom of speech and expression, uniform civil code, etc.; we need say no more except to point out that indiscriminate use of this important lever of public interest litigation would blunt the lever itself."

In view of the discussions and observations made hereinabove, we are of the considered view that this writ application does not deserve our consideration, rather this writ application is filed by the petitioner for the purpose of publicity and such an attempt at the cost of consumption of the time of the Court should be stopped in limini at the bottom of the door.

The writ application stands dismissed.

Let there be cost of Rs.2,00,000/- (Rupees Two Lacs) to be paid by the petitioner to the State exchequer within a period of fortnight and in case of failure, the State authorities are directed to realise the above cost by way of raising a public demand in accordance with law.

Let a photostat copy of the judgment and order be served upon the Principal Secretary to the Government of West Bengal, Finance Department, as well as the Secretary, Government of West Bengal, Hill & Home Affairs, through Mr. Akash Dutta, learned advocate, who is assisting Mr. Amitesh Banerjee, learned Senior Counsel, Government of West Bengal.

Let photostat copy of this order, duly countersigned by the Assistant Registrar (Court), be given to the learned Advocate for the parties on the usual undertaking.

(Debasish Kar Gupta, C.J.)

(Shampa Sarkar, J.)