

THE HIGH COURT OF SIKKIM: GANGTOK
(CIVIL EXTRA ORDINARY JURISDICTION)

D.B.: HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI, CHIEF JUSTICE
HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

W.P. (PIL) No. 06 of 2018

Shri Puran Alley
S/o Shri Govind Prasad Alley
R/o Church Road, Gangtok,
East Sikkim.

.... Petitioner

Versus

- 1.** State of Sikkim
Through Chief Secretary
Government of Sikkim
Gangtok, East Sikkim.

- 2.** Secretary
Buildings & Housing Department
Government of Sikkim
Gangtok, East Sikkim.

- 3.** Chief Engineer
Buildings & Housing Department
Government of Sikkim
Gangtok, East Sikkim.

- 4.** Shri Sonam Topden Bhutia
Class-1 'A' Government Contractor
Regd. No.579/PWD/2008
Lower Tadong, Gangtok,
East Sikkim.

.... Respondents

Application under Article 226 of the Constitution of India.

Appearance:

Mr.B. Sharma, Senior Advocate with Mr. Bholanath Sharma,
Advocate for the Petitioner.

ORDER
(24.05.2018)

Bhaskar Raj Pradhan, J

1. Heard. Mr. Puran Alley, a law graduate but not practicing as an Advocate has preferred the present petition claiming to be an unemployed youth and engaged in doing social work for the upliftment of Sikkim. There are no details of the social works the Petitioner has been doing in the past. The Petitioner claims that after his graduation when he came back to Sikkim in the year 2013 he observed that there was no overall development in the State and the money received from the Center had not been utilized in the proper place for the upliftment of the downtrodden people of Sikkim. There is no further clarification to this broad spectrum allegation. It is his plea that whenever he would visit remote areas he would notice poor people staying in deplorable condition and thus was anxious to find out the exact reason as to why despite the Central Government providing funds the people of Sikkim have not been proportionately uplifted. Besides the allegation there are no facts pleaded or proof submitted to substantiate the allegations. The Petitioner claims that he started doing research in the matter and came across shortcomings in the functioning of the Governmental machineries. The Petitioner claims that those shortcoming were that the funds were utilized on non productive schemes; there was no proper allocation of funds to such schemes which would directly benefit the

downtrodden; the funds were provided for religious matters; funds were not provided for construction of roads, electricity, establishment of specialized hospitals, schools, research work, technical education, medical facilities etc. which are the basic requirements of the people. There is not a single document filed with the Writ Petition to substantiate the statements made about the Petitioner's perceptions of the said shortcomings.

2. It is claimed by the Petitioner that while doing research the Petitioner came across one Notice Inviting Tender (NIT) published in Sikkim Herald, Sikkim Reporter and Dainik Mirmiray. The Petitioner therefore, sought for copy of the "NIT" under the Right to Information Act, 2005 and the Petitioner was furnished with copy of the "NIT" published in Sikkim Herald on 25.05.2017 and 30.05.2017, Sikkim Reporter on 26.05.2017 and Dainik Mirmiray on 26.05.2017. On a perusal of the "NIT", the Petitioner claims he was shocked to notice that the publication of the "NIT" was done in a casual manner. The Petitioner claims that the publication of the tender has not been done in widely circulated papers or National dailies in so far as the Petitioner's knowledge goes but also states in the same breadth that the publication shows that it was published in e-tender. It is the perception of the Petitioner that only a handful of contractors are conversant with computer knowledge. Yet another grievance of the Petitioner is that the tender does not disclose the nature of work, schedule of work, compliance of Sikkim Works Manual, compliance of Sikkim

Financial Rules and other related laws and other details. Mr. B. Sharma, Learned Senior Advocate for the Petitioner could not point out any such non-compliance from the records of the case. The Petitioner states that he also received one Addendum dated 02.06.2017 as well as Corrigendum dated 05.07.2017 through the process of the Right to Information Act, 2005. The Petitioner claims that on examining the Invitation for Bids dated 23.05.2017, the Addendum dated 02.06.2017 and Corrigendum dated 05.07.2017 the Petitioner came to learn how public money from the Government exchequer had been embezzled. It is the case of the Petitioner that the aforesaid three documents makes it clear that the entire exercise of the tender process was undertaken to accommodate Respondent No.4 in order to give him “favouritism”. It is alleged that the Respondent No.4 did not even participate in the pre-bid meeting and in spite of that his tender was accepted. It is the case of the Petitioner that there were as many as three participants in the tender bid. The Petitioner has sought to invoke the Public Interest Litigation remedy to ventilate his perceived grievance and sought the following prayers:-

- a.** *Issue a writ or direction for cancelling the entire tender process for execution of setting up of Sikkim State Museum, Gangtok, East Sikkim being contract work No.03/E Tender/B.HD/2017 holding entire process of tender are carried out dehors the existing laws of the land.*
- b)** *A writ/order or direction for quashing of the entire tender process as the entire tender process is actuated by malafide and due favouritism meted out to respondent No.4.*
- c)** *And after hearing the parties:*

- i. *To kindly quash/cancel the entire Tender process and fund earmarked for this Tender maybe utilised for other project to meet the basic need of the people and in alternative, kindly quash, cancel the entire Tender process, if it is found that Respondent No.4 is not competent to execute the work. And to cancel the whole process of contract if other bidders are not competent to execute the work. If Hon'ble Court find that this project is also in the Public Interest.*
- ii. *Kindly pass order/orders restraining the Respondent No.2 to issue to Work Order in favour of Respondent No.4.*
- iii. *Kindly pass any order or orders if found necessary."*

3. Mr. B. Sharma would submit that although the Invitation for Bids dated 23.05.2017 required that the contractors who have experience in the construction of museum/artefacts and consider themselves capable to undertake execution of the project could download the details and bidding documents, Annexure-P11 dated 17.06.2016 would show that the contractor who has been given the contract i.e. Respondent No.4 did not have the requisite qualification. We have examined Annexure-P11 which is a letter addressed to the Chief Engineer dated 17.06.2017 written by M/s Adland Publicity Private Ltd. stating therein that M/s Adland Publicity Private Ltd. is an old associate agency of Shri Sonam Topden Bhutia (Class I-A Government Contractor) the Respondent No.4 herein. It is also stated in the said communication that the said M/s Adland Publicity Private Ltd. and the Respondent No.4 have been working as a joint venture since 2008. As an annexure

thereto details of various dimensional creative works & designs executed by the said M/s Adland Publicity Private Ltd. were also furnished. Various certificates issued by various authorities have been attached thereto providing information regarding various works undertaken by the said M/s Adland Publicity Private Ltd. The Addendum to the NIT filed by the Petitioner reflect that preference could be given to such agencies having valid agreement with firms/persons who have done museum works at National/State Level. The Corrigendum merely reschedules the dates for bid submission and opening of bids to 28.07.2017 and 01.08.2017 respectively.

4. Mr. B. Sharma, on being asked, could not point out a single document from the records filed by the Petitioner which would reflect that joint venture was not permitted contrary to the Addendum. It is the case of the Petitioner that there were three bidders in the tender process. The two bidders whose bids were rejected are not before the Court or aggrieved. The Writ Petition does not disclose whether the documents filed with it are the entire documents before the Respondents. A perusal of the documents filed by the Petitioner does not disclose any 'favouritism' as alleged. Making wide ranging allegations without any substance is itself an act which cannot be entertained and ought to be discouraged. The Petitioner's allegation that a perusal of the Invitation for Bids, the Addendum and the Corrigendum thereto demonstrate that the Department has left no stone

unturned to accommodate Respondent No.4 remains an unsubstantiated but damning allegation made without any basis or coherence as even a searching examination of those documents it could not substantiate the said allegation. In fact, Mr. B. Sharma could also not point it out to us. There is nothing brought out in the Writ Petition which discloses that Respondent No.4 did not have the necessary prerequisites to qualify in the bid. Roving inquiry merely on the basis of unsubstantiated allegations cannot be permitted to ventilate a presumed grievance of the Petitioner who has failed to demonstrate public interest element or point out a single material to establish even prima facie any act of favouritism towards the Respondent No.4. Public Interest Litigation (PIL) remedy cannot be permitted to be used in the manner sought for. Admittedly the Invitation for bids was dated 23.05.2017 and the date of opening of Tender documents was 01.08.2017. The Writ Petition has been preferred by the Petitioner on 18.05.2018 after nearly a year. There is no indication in the petition as to the present stage of the contract. The Petitioner seeks an order to quash the present tender process and for a direction to utilise the funds earmarked for this project for other projects to meet the basic need of the people. The tender is for setting up of Sikkim State Museum at Gangtok, East Sikkim. There is not a single reason cited as to why or how setting up of a museum is not in public interest. It is a policy decision of the Respondent to set up this museum. Such policies are not open to

Judicial review except when it violates constitutional or statutory provisions which grounds are not available before us in the present petition. The executive is tasked with the primary responsibility for formulating Governmental policies and to carry out its execution and the Writ Court cannot interfere unless the policy is opposed to constitutional and statutory provisions or suffers from manifest arbitrariness, unreasonableness or absurdity. Interference by Courts on mere allegation smelling foul play at every level of administration is unhealthy and bound to make governance impossible. A public spirited individual must not only make such allegations that the act of the Government smacks of arbitrariness, unreasonableness or illegality but must necessarily substantiate the said allegations. Unsubstantiated allegations adversely affect the opposite party and are evidently unfair. There must be a real and genuine public interest involved in the litigation and not only an adventure of a law graduate, who in spite of a professional degree chooses not to practice law and claims to be unemployed youth instead. Public Interest Litigation remedy cannot be resorted to unless it is *bonafide*. The Petitioner's evidently irrational perception that setting up of a museum is non-productive cannot invoke the jurisdiction of this Court to go roving into the process of the tender. The expression 'Public Interest Litigation' means a legal action in a Court of law for the enforcement of public interest or general interest in which the public or a class of the community has pecuniary interest or

some interest by which their legal rights or liabilities are affected. The Supreme Court in re: ***Peoples Union for Democratic Rights & others vs. Union of India & Ors.***¹ defined 'Public Interest Litigation' and observed:

“Public Interest Litigation is a cooperative or collaborative effort by the Petitioner, the State or public authority and the Judiciary to secure observance of constitutional or basic human rights, benefits and privileges upon poor, downtrodden and vulnerable sections of the society.”

5. We are afraid we cannot agree with the perception of the Petitioner that setting up of a State museum is not in public interest and that the funds should be diverted for other public purposes.

6. In the circumstances the Writ Petition is dismissed in *limine*.

7. No orders as to costs.

Sd/-
Judge
 24.05.2018

Sd/-
Chief Justice
 24.05.2018

Approved for reporting: yes.
 Internet: yes.

¹ (1982) 3 SCC 235