

(2004) 12 AHC CK 0174

Allahabad High Court

Case No: Writ Petition No. 4160 (M/B) of 2004

Manendra Nath Rai and Another

APPELLANT

Vs

Chief Secretary, U.P.

RESPONDENT

Government and Others

Date of Decision: Dec. 23, 2004

Acts Referred:

- Constitution of India, 1950 - Article 14, 21

Citation: (2005) 5 AWC 4563

Hon'ble Judges: U.K. Dhaon, J; Rakesh Sharma, J

Bench: Division Bench

Advocate: M.N. Roy and S.K. Singh, for the Appellant; Virendra Bhatia, General and C.S.C., for the Respondent

Final Decision: Dismissed

Judgement

- Heard Sri Manendra Nath Rai, advocate who is one of the two Petitioners, in the present public interest petition and Sri Virendra Bhatia, learned Advocate General, U.P., who has put in appearance on behalf of the opposite parties No. 1 to 3.
- The Petitioners have prayed for the following relief:
- Sri Manendra Nath Rai has submitted that the Chief Minister, Government of U.P. has misused his official position, abused his powers in sanctioning Rs. 34.5 crores for Chaudhary Charan Singh Post Graduate College situate at Henwra, district Etawah. The Management of the college is being looked after by his brother Sri Shiv Pal Singh Yadav. Several members of Parliament and the members of Legislative Assembly have also provided financial assistance to this college. He further submits that the public money is being misused by the opposite parties and the action of allocating funds by the Chief Minister of U.P. is violative of Articles 14 and 21 of the Constitution of India.

4. Learned Counsel for the Petitioners have relied upon judgments in Chaitanya Kumar and Others Vs. State of Karnataka and Others, Vineet Narain and others Vs. Union of India and another, Chairman, Railway Board and Ors. v. Mrs. Chandrima Das and Ors. 2000 HVD (1) 374 and Centre for Public Interest Litigation Vs. Union of India (UOI) and Another . On the basis of the aforesaid judgment he submits that the Public Interest Litigation can be initiated by the Petitioners when executive action was arbitrary and the public functionaries violated the fundamental rights and failed to enforce the public duties.

5. Sri Virendra Bhatia, learned Advocate General has raised a preliminary objection regarding the maintainability of the writ petition on the ground that all action of the Government cannot be challenged by way of Public Interest Litigation. He further submits that the affidavit filed in support of the writ petition is itself defective and is wholly misconceived. He also submits that a sum of Rs. 34.50 crores was taken out of the contingency funds for Chaudhary Charan Singh Post Graduate Degree College, Henwra, district Etawah situate in backward areas of Etawah district.

6. The above said amount taken out of the contingency funds has been recouped under the Uttar Pradesh Appropriation (Supplementary 2003-2004) Act 2004. Learned Advocate General has further submitted that this amount taken out of the contingency funds has received legislative sanction by the Uttar Pradesh Appropriation (Supplementary 2003-2004) Act 2004 and the Petitioners have not sought any relief against this Act, duly created by the Legislature of the State in accordance with law. This legislative enactment has not been assailed through the writ petition. The main relief claimed cannot be granted to the Petitioners unless and until the Uttar Pradesh Appropriation (Supplementary 2003-2004) Act 2004 is declared as ultra vires and the said Act is an Act of Legislature and the said Act could only be challenged on the grounds on which any other enactment can be challenged. Sri Bhatia, learned Advocate General has submitted that it is the settled legal proposition that the Act made by the Legislature can be struck down by the Court only on the two grounds alone viz. (i) lack of legislative competence and (ii) violation of any of the fundamental rights, guaranteed in Part III of the Constitution or any other constitutional provision. On this point he has relied on the decisions of the Hon"ble Supreme Court in State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc., and Public Services Tribunal Bar Association Vs. State of U.P. and Another . He has also relied upon the several decisions of the Supreme Court of India in Janata Dal Vs. H.S. Chowdhary and Others, Narmada Bachao Andolan Vs. Union of India and Others, BALCO Employees Union (Regd.) Vs. Union of India and Others, and Dr. B. Singh Vs. Union of India (UOI) and Others , in support of his submissions.

7. Sri Virendra Bhatia, learned Advocate General also submits that in order to honor late Chaudhary Charan Singh, the Former Prime Minister of India, a great national patriot, one of the greatest leaders of the farmers and downtrodden classes, the

State Government took a decision to celebrate the birth centenary of Chaudhary Charan Singh and also decided to extend financial assistance to Chaudhary Charan Singh Degree College, Henwra, district Etawah under "Shiksha Protsahan Yojna" managed by the Department of Education of the State Government. The said college is a Government aided educational institution and funds were required for constructions of Hostel for boys and girls students belonging to backward classes of Uttar Pradesh.

8. We have heard the arguments of Sri Manendra Nath Rai, an advocate and Sri Virendra Bhatia learned Advocate General and gone through the record.

9. The Petitioners have challenged the action of the State Government in providing financial assistance to Chaudhary Charan Singh Degree College, Henwra, district Etawah for which the Government has sought budgetary demand after taking out Rs. 34.50 crores from the contingency funds. It is clear from record that the amount taken out of contingency funds has received. Legislative sanction by the Uttar Pradesh Appropriation (Supplementary 2003-2004) Act 2004 (U.P. Act No. 2 of 2004). This Act has not been assailed in the writ petition. The Petitioners have not indicated anywhere in the writ petition about the lack of legislative competence in the State Legislature Act while passing the Uttar Pradesh Appropriation (Supplementary 2003-2004) Act 2004. The Petitioners have failed to prove violation of any of the fundamental rights, guaranteed in Part III of the Constitution or any other constitutional provision. The State Government has also made supplementary demand and received legislative sanction after introducing bill in the State Legislature. The bill was approved by both the Houses of the State Legislature and in majority of the representatives of the people (members of Legislative Assembly and the Members of Legislative Council) have also approved the action of the State Government.

10. Hon"ble the Supreme Court in State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc., has held in para 43 as under:

43. ...A law made by Parliament or the Legislature can be struck down by Courts on two grounds and two grounds alone, viz. (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. There is no third ground....

11. Hon"ble the Supreme Court in Public Services Tribunal Bar Association Vs. State of U.P. and Another, , has held in paragraph 26 as under:

26. The constitutional validity of an Act can be challenged only on two grounds viz. (i) lack of legislative competence ; and (ii) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provisions. In State of A. P. v. McDowell and Co., this Court has opined that except the above two grounds there is no third ground on the basis of which the law made by the competent Legislature can be invalidated and that the ground of invalidation must

necessarily fall within the four corners of the aforementioned two grounds.

12. Hon"ble the Supreme Court in [Dr. B. Singh Vs. Union of India \(UOI\) and Others](#) , has held in paragraph 12 as under:

12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity-oriented or founded on personal vendetta. As indicated above, courts must be careful to see that a body of persons or member of public, who approaches the Court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique consideration by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

13. No challenge has been made against the aforementioned Act No. 2 of 2004.

14. In view of above, no interference is required in the action of the State Government in sanctioning the financial assistance to the Chaudhary Charan Singh Post Graduate College, Henwra, district Etawah. The writ petition is devoid of merits and it is accordingly dismissed. No order as to costs.