

(2007) 01 CAL CK 0001**Calcutta High Court****Case No:** Writ Petition No. 28512 (W) of 2006

Publishers and Booksellers Guild
and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT**Date of Decision:** Jan. 12, 2007**Acts Referred:**

- Constitution of India, 1950 - Article 14, 226

Citation: (2007) 2 CHN 1**Hon'ble Judges:** Kishore Kumar Prasad, J; Bhaskar Bhattacharya, J**Bench:** Division Bench

Advocate: Aloke Kumar Ghosh and Achintya Kumar Banerjee, Aninda Mitra, N. Chowdhury, N. Bhattacharya and A. Pramanick, Subhas Dutta and S.C. Basu, in CAN No. 179 of 2007, Somenath Bose, Sukhendu Sekhar Roy and Shakil Mohammed Akhtar, in CAN No. 142 of 2007 and Kalyan Benerjee, Arunava Ghosh and Agniswar Dutta Gupta, in CAN No. 184 of 2007, Ashoke Banerjee and Sarajit Ghosh, Bikash Ranjan Bhattacharyya and Kallol Basu, P.B. Mukherjee, Manojit Bhattacharjee and Sainlen Sharma, for the Appellant; Balai Chandra Roy, Id. A.G., Sandip Srimani and Samiran Giri for respondent Nos. 1 to 4 and Ramesh Sharma, S. Bhattacharya and K.K. Maiti, for the Respondent

Final Decision: Dismissed**Judgement**

1. This application under Article 226 of the Constitution of India, by describing the same as Public Interest Litigation involving environmental and pollution control, is at the instance of one Publishers and Booksellers Guild, a society registered under the West Bengal Societies Registration Act, 1961, represented by its Hon. Secretary and by this application, the writ petitioners have prayed for the following relief:

a) A writ of and/or order and/or direction in the nature of Mandamus commanding the respondents, their servants, agents and/or assigns to forthwith implement the consensus/agreement recorded in the minutes of the proceedings of the meeting of Kolkata Book Fair, 2007 held on November 09, 2006, copy whereof is already

annexed hereto and marked "P3" and to take all steps for holding of the 32nd Book Fair for the year 2007 at its original venue at Kolkata Maidan on Outram Road at the crossing of Park Street and Jawaharlal Nehru Road forthwith, the location whereof is indicated in the sketch plan annexed hereto and marked "P2".

b) Rule Nisi in terms of prayers (a) to above.

c) This Hon"ble Court be graciously pleased to grant permission for holding of 32nd Kolkata Book Fair, 2007 by the petitioners at the same venue where the previous Kolkala Book Fair, 2006 was held.

d) Directions be given upon the respondents to take necessary steps for facilitating holding of 32nd Kolkata Book Fair on January 31 to February 11, 2007 at the same venue as in the previous year and shown in the sketch plan annexed hereto and marked "P2".

e) An order of injunction commanding the respondents and each one of them to grant permission to hold Book Fair for the year 2007 at its original venue on Outram Road at the crossing of Park Street and Jawaharlal Nehru Road forthwith.

f) An interim order of injunction in terms of prayers above.

g) Such further or other order or orders be made and/or direction or directions be given as would afford complete relief to your petitioners.

2. The case made out by the writ petitioners may be summed up thus:

(i) The writ petitioner No. 1 is an Association of Publishers and Booksellers Guild of Kolkata and is a society duly registered under the West Bengal Societies Registration Act, 1961 by the Registrar of Firms, Societies and Non-trading Corporation, West Bengal and such society was formed mainly with the objects of promoting professional standards amongst the members, to co-operate for mutual benefit with other organizations concerned in the creation, production and distribution of books, to encourage the spread of literacy and education in India and throughout the World, to provide assistance and consultancy services to spotlight future needs, to initiate new techniques and applications and to improve the technical and educational qualifications of the members of the Guild and their Staff, to conduct research and to institute a documentation centre for disseminating information pertinent to the book industry, etc.

(ii) From the year 1976, the petitioner No. 1 had been taking the entire responsibility for holding a Book Fair at the Maidan of Kolkata and for the purpose of holding the said Book Fair for the year 2007, the petitioners duly issued the prospectus to all concerned.

(iii) According to the petitioners, for holding the Book Fair at the Maidan, the site of Outram Road at the crossing of Park Street and Jawaharlal Nehru Road, is immensely necessary not only for the purpose of convenience of accommodating

more than 25 lakhs of visitors, but also for the fact that the required area of the ground works out to be 1,13.617 sq. mtr. or 28 acres approximately and that no other suitable area is available in any other part of Kolkata.

(iv) In a meeting taken place on November 09, 2006 called by Shri A.K. Deb, Chief Secretary, Government of West Bengal for the purpose of holding discussion regarding proposal to hold Kolkata Book Fair at Kolkata Maidan, at the Writers' Buildings at Kolkata attended by (i) Major General Deepak Raj, SM, GOC, Bengal Area; (ii) Brigadier D.K. Ghosh, Deputy GOC, Bengal Area; (iii) Shri P. Ray, I.A.S., Additional Chief Secretary, Home Department; Dr. P.K. Agarwal, Principal Secretary, PWD, Shri P. Mukhopadhyay, Commissioner of Police and (vi) Shri Tridib Kumar Chatterjee, General Secretary, Publishers & Booksellers Guild, it was formally recorded that all the persons excepting the representatives of the Army authorities agreed that such Book Fair should be held after complying with all the laws of the land for the time being in force but the General Officer, Bengal Area stated that it was the consistent stand of the Army authorities that the Maidan should not be subject to environmental degradation. They, however, maintained that if the Hon'ble High Court gave permission to hold Book Fair at the Maidan, the Army authority would not have any objection. The General Officer, Commanding, Bengal Area, further clarified that the Army would not be a party to the application which might be filed either by the State Government or any other agency for holding the Book Fair in the Maidan. To the aforesaid effect, minutes recorded by the Chief Secretary, Government of West Bengal are annexed at pages 34-35 of the present writ application.

(v) According to the writ petitioners, in view of the stance taken by the Army authority, they are unable to hold the Book Fair, and, as such, the said attitude of the Army authority has given rise to the cause of action for filing the present writ application.

3. Initially, a Division Bench presided over by the Hon'ble Chief Justice while entertaining the application gave direction upon the Army authority to clarify its stand by affirming affidavit.

4. Pursuant to such direction, the Army authority has affirmed an affidavit reiterating their stance reflected in the minutes recorded by the Chief Secretary which are annexed to this writ application.

5. Subsequently, the matter has come up before this Bench.

6. In connection with this application, several outsiders have come with applications for being added as party-respondents for the purpose of assisting this Court in arriving at its conclusion.

7. It appears that the State-respondents represented by the learned Advocate-General, West Bengal Pollution Control Board represented by Mr. B.R.

Bhattacharyya, the Kolkata Municipal Corporation represented by Mr. Aloke Kumar Ghosh, have all supported the writ petitioners and have contended before us that if the Court grants permission to hold such Book Fair after complying with all the requirements of the laws for the time being in force, they have no objection.

8. Some of the applicants for being added as party-respondents, however, vehemently opposed the aforesaid submission contending that the present writ application was not at all maintainable; over and above, if such permission is granted, it will infringe Article 14 of the Constitution of India inasmuch as one of the applicants prayed for holding Trade Fair, but its prayer was rejected by the Army authority.

9. After hearing Mr. Mitra, learned Senior Advocate appearing for the writ petitioners, and after going through the averments made in the writ application as well as in the affidavit-in-opposition used against one of the applications for addition of party, we are, however, of the view that the present writ application is not at all maintainable even if we for the time being assume all the averments made in the writ application to be true.

10. We have already pointed out that the long and short of the grievance of the writ petitioners is that the Army authority, the owner of the land, having refused to grant unconditional permission, but having given a conditional consent that subject to the grant of sanction by this Court it would grant licence for holding the Fair, they have come up before us by filing this Public Interest Litigation.

11. In our view, in this case as pointed out earlier, even if we accept all the averments made in the application to be true, the same cannot be maintained as a Public Interest Litigation. The writ petitioners themselves prayed for permission for holding the Book Fair before the owner of the land but were unsuccessful. Therefore, they are advancing their own cause and in such a situation, the present litigation cannot be said to be one for upholding the public interest. Although Mr. Mitra strenuously tried to convince us that the writ petitioners are doing public service and it is a non-profiting organization, as a result, it cannot be said that they are advancing their own cause, we are not at all impressed by such submission.

12. This is a case where an organizer of a Book Fair approached the owner of the land for granting permission for holding Book Fair, when the owner refused to grant such permission unconditionally and such refusal is the real cause of action for filing the purported Public Interest Litigation.

13. In such a situation, in our view, the appropriate remedy of the writ petitioners does not lie by filing a Public Interest Litigation.

14. Mr. Mitra, in this connection, further submitted that as the Army authority refused to grant unconditional permission apprehending violation of environmental law, his clients were under the impression that this is a fit case where this Bench

having jurisdiction to take up the matter relating to environmental pollution, should be approached.

15. Mr. Mitra further contended that because of the fact that the Army authority specifically disclosed the fact that but for the consent of the High Court they would not grant permission, that situation has compelled his clients to move this application.

16. We are afraid, we are not all impressed by such submission. If the owner of the land, who is approached for giving license for holding the Book Fair refuses such permission on the ground that except with the sanction of the High Court they would not accord such approval, for that reason the High Court cannot be bothered with a litigation as under the law of the land there is no provision for granting such permission at the instance of this Court for holding any Book Fair before the appropriate authorities fixed by the statutes are being approached,

17. It is true that in case of any breach of environmental law at the instance of any person after exhausting all the remedies provided in the various laws relating to prevention of pollution, an aggrieved party can approach this Court by taking aid of Article 226 of the Constitution of India, but so long permission has not been accorded by the owner of the land, no question of considering the case whether holding of such Fair will create pollution of environment arises; nor is it a case where the authorities vested with the power by the statutes have been approached and they have taken any decision which is contrary to the law.

18. We, therefore, find that at this stage, where the owner of the land has not granted any unconditional permission, but has refused the approval on the ground that the writ petitioners should take permission of the High Court, such fact cannot confer jurisdiction upon the High Court to entertain this writ application as a Public Interest Litigation for deciding the question whether the holding of the Fair would create pollution of environment. In our view, the case made out in this application does not come within the yardstick laid down by the Supreme Court of India in the case of Kushum Lata Vs. Union of India (UOI) and Others, where the Supreme Court has in details discussed all the previous decisions of the Supreme Court on the question of maintainability of a Public Interest Litigation.

19. We, thus, hold that the present writ application in the form of Public Interest Litigation relating to environmental laws of the country is not maintainable and we dismiss this writ application on that ground alone.

20. We make it clear that we have otherwise not gone into the question whether such permission in the facts of this case should be granted or not in accordance with law of the land and the rejection of this application will not stand in the way of the writ petitioners in approaching appropriate forum in accordance with law.

21. In view of dismissal of the writ application itself on the ground that the same is not maintainable, we have not gone into the other applications filed by the persons who sought to be added as parties, nor have we considered their respective grievances made in those applications, and, thus, all such applications are disposed of as infructuous.

22. In the facts and circumstances of the case, there will be, however, no order as to costs.

23. Let xerox certified copy of this order be given to the parties by 12 noon on Monday next by the office on the undertaking to apply for certified copy of this order in course of this day.