

Municipal Committee. The matter is, thus, referred back to the Executive Officer, Municipal Committee, to determine the quantum of such octroi-duty, which was illegally collected either by the impugned orders or thereafter and to refund the same to the petitioner Company. These directions would be complied within a period of six months. Parties are left to bear their own costs.

*R.N.R.*

(FULL BENCH)

*Before : M. R. Agnihotri, J. S. Sekhon, A. L. Bahri, A. P. Chowdhri  
and G. R. Majithia, JJ.*

SURESH KUMAR,—*Petitioner.*

*versus*

THE STATE OF PUNJAB,—*Respondent.*

*Civil Writ Petition No. 2376 of 1993.*

19th March, 1993.

*Constitution of India, 1950—Art. 226—Code of Civil Procedure, 1908—S. 151—Advocates on prolonged strike—Hardship caused to litigant public—Cause of strike being demand of lawyers for judicial probe into death of an Advocate and his family members under alleged mysterious circumstances—Public Interest Litigation filed for issuing mandamus to State to order judicial enquiry—Bar Council and Bar Association impleaded as parties by D. B. and matter admitted to larger bench—Written statements of impleaded respondents filed raising issues larger than those arising from the petition—Petitioner, thereafter, praying for withdrawal of petition—Prayer opposed by Bar bodies—Petition is liable to be dismissed as withdrawn—Public interest not made out for decision on merits in absence of petitioner—Mere admission of matter by D. B. does not convert petition into P.I.L.*

*Held, that the tone and tenor of the petition as framed by the petitioner is the hardship caused to the litigant public due to the strike by the members of the Bar. The real emphasis, in our view, is on the situation arising out of the lawyers' strike. While referring to the strike, the petitioner has no doubt mentioned about the disappearance of Mr. Kulwant Singh, his wife and their minor child in mysterious circumstances and demand of the members of the Bar that a judicial enquiry be ordered. This, in our view, is the background for the members of the Bar to go on strike. On the*

other hand, the written statement filed on behalf of the High Court Bar Association seeks to raise much larger issues. In other words, the tenor of the written statement filed by the Bar Association and the Bar Council is materially different from that of the petition as originally framed.

(Para 9)

*Held*, that in our view, there is a vital distinction between the original petition filed by the petitioner and the stand taken by the added respondents. Reading between the lines, the reference of the former is to save the "litigant" and that of the latter is to save the "lawyer". In one case the relief is claimed against the members of the Bar and in the other the relief is claimed against the State. We do not think that we would be justified in permitting the proxy war in the name of litigation styled as the public interest litigation when the real sufferer is the litigant public. Ordinarily one would expect a broad identity of interest in the litigant and the lawyer which is lacking in the present case.

(Para 10)

*Held*, that for the purposes of the present matter, it is not necessary to go into the larger question as to the parameters of public interest litigation in general. What appears to be settled position of law is that whereas any person can set the criminal law into motion, no stranger can challenge conviction or other adverse order recorded against a person under the garb of public interest litigation. Such action can be taken by the person concerned and where such person is under a disability, by his next friend etc. This in addition to the fact that the Court on its own is bound to provide a counsel to the accused at the State expense. Since the matter relating to the alleged murder of Mr. Kulwant Singh and his family members is *sub judice*, no stranger can maintain a petition under the garb of public interest litigation.

(Para 11)

*Held further*, that the mere fact that the Motion Bench has admitted the writ petition of Suresh Kumar for the consideration of the Full Bench does not necessarily conclude the question whether, in fact, the writ petition relates to a matter of public interest litigation. It was only on a *prima facie* view of the matter that the writ petition was admitted, which the petitioner now seeks to withdraw. It is axiomatic that no order of the Court can prejudice the parties to the *lis*. Therefore, the admission of the writ petition by itself will not convert the petition of Suresh Kumar into a public interest litigation.

(Para 12)

*Civil Writ Petition under Article 226 of the Constitution of India, praying that a writ in the nature of Mandamus may be issued to the respondent directing them to order a judicial enquiry by a sitting Judge of the High Court or a District Judge or a Vigilance Judge belonging to the higher judiciary, to go into the circumstances in which the gruesome murder of late Shri Kulwant Singh,*

*Advocate of Ropar, his wife and minor child took place. Any other relief which this Hon'ble Court deem proper and any direction befitting the occasion may kindly be issued. Advance notice be dispensed with.*

CIVIL MISC. NO. 1989 OF 1993 :—

Petition u/s 151 of the Code of Civil Procedure, praying that the above writ petition may be dismissed as withdrawn.

(This case was referred to Full Bench by Division Bench consisting of Hon'ble Mr. Justice S. S. Sodhi and Hon'ble Mr. Justice V. K. Bali on 16th March, 1993 as their lordships observed that the petition raises substantial questions of law of obvious general public interest and importance. The Full Bench Consisting of Hon'ble Mr. Justice M. R. Agnihotri, Hon'ble Mr. Justice J. S. Sekhon, Hon'ble Mr. Justice A. L. Bahri, Hon'ble Mr. Justice A. P. Chowdhri and Hon'ble Mr. Justice G. R. Majithia, dismissed the writ petition as withdrawn on 19th March, 1993.)

*Nemo, for the petitioner.*

G. K. Chatrath, Advocate General with S. K. Sharma, D.A.G., S. S. Saron, D.A.G., and Randhir Singh, Asstt. A.G. for the State.

G. S. Grewal, Senior Advocate, S. C. Mohunta, Senior Advocate with G. C. Dhuriwala,

I. P.S. Mann Advocate for High Court Bar Association.

H. S. Hooda, Senior Advocate with P. S. Hundal, Advocate, for Bar council and S. S. Nijjar, Senior Advocate with Gurpreet Singh, Advocate.

#### JUDGMENT

*M. R. Agnihotri, J.*

Facts necessary for the disposal of Civil Misc. No. 1989 of 1993 are as follows :

(2) The High Court Bar Association as well as District Bar Associations in the various districts of the States of Punjab and Haryana and Union Territory of Chandigarh have been on strike since February 6, 1993 or so. This has resulted in great hardship to the public in general. Even urgent matters like bail and those

involving stay cannot be effectively put before the various Courts concerned including the High Court. The cause for strike is that one Advocate of Ropar named Mr. Kulwant Singh along with his wife and a minor child are believed to have died an unnatural death and the police had put in a challan in the Court in this connection. Members of the Bar were dissatisfied with the investigation. They were demanding a thorough probe by a Judge of the High Court or a member of Superior Judicial Service. One Suresh Kumar resident of district Ambala (Haryana) (hereinafter referred to as 'the petitioner') filed CWP No. 2376 of 1993 seeking a writ of *mandamus* to the State Government of Punjab to order a judicial enquiry into the circumstances relating to alleged murder of Mr. Kulwant Singh, his wife and their minor child. The State of Punjab was arrayed as the sole respondent.

(3) A Division Bench of this Court by its order dated March 5, 1993, while ordering notice of motion, directed that the Punjab and Haryana High Court Bar Association as also Punjab and Haryana Bar Council be impleaded as parties. Written statements were filed on behalf of the State of Punjab and the added respondents. A further written statement was filed on behalf of the State of Punjab on the ground that a new case had been set up in the return filed on behalf of the High Court Bar Association and the Bar Council. By order dated March 16, 1993, the aforesaid Division Bench admitted the petition to a Full Bench on the ground that the petition raised "substantial questions of law of obvious general public interest and importance." The petitioner has now moved the present Civil Misc. under section 151 of the Code of Civil Procedure seeking to withdraw the writ petition. The prayer has been opposed by the High Court Bar Association and the Bar Council. It has, however, been supported by the State of Punjab.

(4) The contention of Mr. G. S. Grewal, Senior Advocate, for the High Court Bar Association is that the present writ petition is in the nature of public interest litigation and the same cannot be allowed to be withdrawn simply on the ground that the petitioner was no longer interested in prosecuting it. It was further contended by Mr. Grewal that the matter having been admitted, the same deserved to be disposed of on merits according to law, especially to end the stalemate which had been created by the turn of events. He pointed out that work in the Courts had been paralysed for more than six weeks and in these circumstances permitting the withdrawal at this stage would be against the interests of Justice.

(5) Mr. H. S. Hooda, Senior Advocate appearing for the Bar Council, adopted the above contentions of Mr. Grewal and added that the Hon'ble Judges of the Division Bench had themselves issued notice to the Bar Association and the Bar Council. Detailed written statements had been filed on their behalf. A counter had been filed on behalf of the State Government and the matter had been heard by the Division Bench at some length. In these circumstances, it was submitted, that the interest of justice required that the matter be disposed of on merits. Mr. Hooda also submitted that the petitioner had failed to make out any good case for withdrawal.

(6) Mr. S. C. Mohunta, Senior Advocate, while supporting Mr. Grewal and Mr. Hooda, contended that the writ petition, in question, related to public interest litigation and emphasised that what the petitioner was seeking was not a relief for himself as an individual. He prayed to the Court to come to the aid of the public in general by acceding to the legitimate demand of the members of the Bar so that the on-going strike could be ended and further hardship to the people avoided.

(7) The contention of Mr. G. K. Chatrath, learned Advocate-General, Punjab, on the other hand, is that the petition in question is not in the nature of a public interest litigation and, in any case, it is settled law that in so far as criminal law is concerned, the person aggrieved alone can approach the Court for appropriate relief and a third person cannot start the litigation under the cover of public interest litigation. He further contended that the return filed by the High Court Bar Association and the Bar Council had given a new dimension to the petition as originally filed. They sought to raise larger issues which were beyond the scope of the petition as originally framed. Mr. Chatrath, therefore, vehemently submitted that the petition deserved to be dismissed as withdrawn.

(8) We have given our deep and earnest consideration to the rival contentions of the learned counsel.

(9) We may point out, at the outset, that in our view the tone and tenor of the petition as framed by the petitioner is the hardship caused to the litigant public due to the strike by the members of the Bar. The real emphasis, in our view, is on the situation arising out of the lawyers' strike. While referring to the strike, the petitioner has no doubt mentioned about the disappearance of Mr. Kulwant Singh, his wife and their minor child in

mysterious circumstances and demand of the members of the Bar that a judicial enquiry be ordered. This, in our view, is the background for the members of the Bar to go on strike. On the other hand, the written statement filed on behalf of the High Court Bar Association seeks to raise much larger issues. In other words, the tenor of the written statement filed by the Bar Association and the Bar Council is materially different from that of the petition as originally framed.

(10) In our view, there is a vital distinction between the original petition filed by the petitioner and the stand taken by the added respondents. Reading between the lines, the reference of the former is to save the "litigant" and that of the latter is to save the "lawyer". In one case the relief is claimed against the members of the Bar and in the other the relief is claimed against the State. We do not think that we would be justified in permitting the proxy war in the name of litigation styled as the public interest litigation when the real sufferer is the litigant public. Ordinarily one would expect a broad identity of interest in the litigant and the lawyer which is lacking in the present case.

(11) For the purposes of the present matter, it is not necessary to go into the larger question as to the parameters of public interest litigation in general. What appears to be settled position of law is that whereas any person can set the criminal law into motion, no stranger can challenge conviction or other adverse order recorded against a person under the garb of public interest litigation. Such action can be taken by the person concerned and where such person is under a disability, by his next friend etc. This in addition to the fact that the Court on its own is bound to provide a counsel to the accused at the State expense. Since the matter relating to the alleged murder of Mr. Kulwant Singh and his family members is sub-judice, no stranger can maintain a petition under the garb of public interest litigation.

(12) Viewing it from another angle, the mere fact that the Motion Bench has admitted the writ petition of Suresh Kumar for the consideration of the Full Bench does not necessarily conclude the question whether, in fact, the writ petition relates to a matter of public interest litigation. It was only a *prima facie* view of the matter that the writ petition was admitted, which the petitioner now seeks to withdraw. It is axiomatic that no order of the Court can

prejudice the parties to the *lis*. Therefore, the admission of the writ petition by itself will not convert the petition of Suresh Kumar into a public interest litigation.

(13) We are aware of the essential role which the Bar has to play in the present day system of justice. No one who is interested in public welfare can be happy about the strike which has gone on for over six weeks and threatens to continue indefinitely in the future. The real sufferer is the litigant public. We, therefore, appeal to all the Associations of the Bar to call off the strike to avoid hardship to the litigant public.

(14) In view of the aforesaid factual and legal position, we have no option but to allow Civil Misc. application of the petitioner seeking withdrawal of his writ petition. The same is accordingly dismissed as withdrawn.

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R N.R.

Before :—S. D. Agarwala, C.J. and H. S. Bedi, J.

NACHHATTAR SINGH AND ANOTHER.—*Petitioners*,

*versus*

STATE OF PUNJAB AND OTHERS,—*Respondents*.

Civil Writ Petition No. 1541 of 1993.

28th April, 1993.

*Constitution of India, 1950—Art. 226—Punjab Gram Panchayat Act, 1952—S. 13-B—Election to office of Sarpanch and Panch—Election result challenged by way of writ petition—Alternative remedy of election petition available—Maintainability of the writ petition—Scope of powers under Art. 226.*

*Held*, that while the remedy for the purpose of challenging the result of the election by way of an election petition under S. 13-B of the Act may be available yet in the facts and circumstances of a particular case the High Court could interfere under Article 226 of the Constitution. The availability of an alternative remedy is not the solitary test; such a remedy must, in addition, be adequate