

Court No. - 1

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Case :- P.I.L. CIVIL No. - 20180 of 2021

Petitioner :- Hon'Qazi Marzia J. S.C.Afganistan Thru.Adv.(In-Person)&Ors.

Respondent :- U.O.I. Thru. Secy. P.M. Office N.Delhi & Ors.

Counsel for Petitioner :- Suresh Kumar Gupta

Counsel for Respondent :- A.S.G.

Hon'ble Ritu Raj Awasthi,J.

Hon'ble Abdul Moin,J.

1. Heard Sri Suresh Kumar Gupta, Advocate who appears in person and Sri S.B.Pandey, learned Senior Advocate assisted by Sri Anand Dwivedi, learned counsel appearing for the respondents no. 1 to 4.

2. The instant writ petition in the nature of Public Interest Litigation has been filed praying for the following reliefs:-

*"(i) issue a writ, order or direction in the nature of mandamus directing the opposite party no. 1 to 6 to proceed in accordance with International Laws to provide the **Constitutional Political Asylum** to the petitioners as well as provide him each and every legal help after bringing them within their territory of India for Constitutional safe guards provided under Article 21 of the Constitution of India.*

(ii) Issue a writ, order or direction in the nature of mandamus directing the opposite party no. 1 to 5, being claimed as a Sovereign nation and to take necessary Diplomatic steps including the Military Operations as ell as the back channel Covered Operation/ Diplomatic operations for ensuring a safe humatarian/political atmoshphere in the Province of Afghanistan since it is a part of Pro-India State since 16th August, 1945.

(iii) Issue any other such order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case in favour of the petitioners."

3. The array of parties is as follows:-

1. *Smt. Qazi Marzia Hon'ble Judge of Supreme Court of Afganistan sitting at Kabul the capital of Afghanistan.*
2. *Smt. Saleema Majari, Ex- Governor, Kandhar Pre Indian Province of State of Kalath Afghanistan.*
3. *Nilofar Rahmani Fighter Pilot Afghan Nationalist Army,*

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Resident of Friends Colony, Kabul Kandhar Afghanistan

Petitioners no. 1, 2 and 3 being represented here through Mr. Suresh Kumar Gupta, Advocate (Citizen of India), Son of Late Shambhu Ratan Gupta, Resident of Village/Post- Tikonia Kheri, Tehsil- Nighasan, District- Lakhimpur Kheri, presently residing at 3, Bihari Park, Judges Lane, Saraswatipuram, Lucknow, Practcing at High Court, Lucknow Bench, Lucknow.

.....**Petitioners**

VERSUS

1. *Union of India through its Secretary at Prime Minister Office, 7 Race Course Road, New Delhi-110011.*
2. *Ministry of Home Affairs though its Joint Secretary (Foreign Division) South Block, New Delhi-110011.*
3. *Ministry of External Affairs, though its Joint Secretary (Foreign Division), Shastri Bhawan, New Delhi.*
4. *Ministry of Defence through its Joint Secretary (Military Operations) North Block, New Delhi.*
5. *High Commissioner of Afghanistan (India recognized embassy) 3, Chankyapur, New Delhi.*
6. *Secretary, United Nations sitting at New Delhi Office through Secretary embassy of United States of America, 4 Chankyapuri, New Delhi.*
7. *Mulla Abdul Gani Beradar Wanted Supreme Commander Taliban Terrorist Organization presently residing in President House of Kabul Afghanistan*
8. *Khaleel Hakkani son of Late Jalaluddin Hakkani, Supreme Commander Pakistani Taliban and declared absconder of worth reward Seventy Million Dollars by United Nations presently residing in the Governor House Kabul, Afghanistan.*

4. From a perusal of array of parties it comes out that Sri Suresh Kumar Gupta, Advocate has indicated that he is representing the petitioners no. 1, 2 & 3. In paragraph 8 of the writ petition it has been indicated that the petitioners have been compelled to file the Public Interest Litigation through **next friend** because of their continuous harassment by the regime of Afghanistan.

5. A pointed query was put to Sri Suresh Kumar Gupta, Advocate

as to how he can be said to be a friend or next friend as indicated in paragraph 8 of the writ petition and as to why the petitioners no. 1, 2 & 3 could not themselves approach this Court in case of their grievance, to which a reply has been given that Sri Suresh Kumar Gupta is a **friend** of petitioners no. 1, 2 & 3 on social media without explaining as to how he is a friend so as to enable him to file the instant writ petition on behalf of other petitioners. There is no authorization of petitioners no. 1, 2 & 3 authorizing Sri Suresh Kumar Gupta to file the instant petition nor any vakalatnama given to Sri Suresh Kumar Gupta by petitioners no. 1, 2 & 3.

6. The aspect of "friend" has been considered by the Apex Court in the case of **Ashok Kumar Pandey Vs. The State of West Bengal and Ors** reported in **AIR 2004 SC 280** wherein while dealing with the concept of "friend" the Apex Court has held as under:-

"31. The petitioner there claimed to be a friend of the convicts, and it was held that he has no locus standi to move the Court under Article 32 of the Constitution. Unless the aggrieved party is a minor or an insane or one who is suffering from any other disability which the law recognizes as sufficient to permit another person e.g., next friend, to move the Court on his behalf for example, see Sections 320(4-a), 330(2) read with Sections 335(1)(b) and 339 of the Code of Criminal Procedure, 1973 (in short the 'Code'). Ordinarily the aggrieved party has the right to seek redress".

7. Considering the aforesaid law as laid down by the Apex Court in the case **Ashok Kumar Pandey (supra)** it is apparent that the petition by a person in the capacity of friend can only be filed in the case of a minor or an insane person or one who is suffering from any other disability which the law recognizes as sufficient to permit another person e.g., next friend, to move the Court on his behalf.

8. It is not the case of Sri Suresh Kumar Gupta that the petitioners no. 1, 2 & 3 are either minor or insane or suffering from any other disability which the law recognizes as sufficient to permit Sri Suresh Kumar Gupta to move the Court on their behalf. Thus we are constrained to hold that the instant Public Interest Litigation filed by

Sri Suresh Kumar Gupta in the capacity of being friend or next friend of petitioners no. 1, 2 & 3 is clearly not maintainable and deserves to be dismissed on this ground alone.

9. Another question which confronts the Court would be the credentials of the petitioners in filing the Public Interest Litigation. In paragraph 3 of the writ petition it has been indicated that

"The petitioners is citizen of India and is well know public spirited social activist, who is positively contributing to the Society/Nation in all possible ways and he does not have anything against him of such nature which legally or otherwise bars her from filing the present PIL in the national interest. In addition to satisfying the requirements of the above mentioned the petitioners is specifically stating that he has not received any contribution regarding the basic expenses in filing the present writ petition neither he is supposing to his credit any kind of benefit from anyone upon his credentials and moral values inheridentally delivered through our ancestors and the dignities of our nation".

10. As already indicated above it is not the petitioners themselves who have filed the petition rather it is Sri Suresh Kumar Gupta who is espousing their cause by alleging himself to be their **friend** thus it is apparent that a false averment has been given in paragraph 3 of the writ petition that "*petitioners is citizen of India*" as the petitioners no. 1, 2 & 3 are not citizens of India.

11. Be that as it may, the Court would have to see the credentials of Sri Suresh Kumar Gupta in filing the instant writ petition. Though, it has been indicated in paragraph 4 of the writ petition that it is a public cause and no personal or private interest is involved which appears to be in consonance with Chapter XXII Sub Rule (3-A) which has been added in the Allahabad High Court Rules, 1952 (hereinafter referred to as "Rules, 1952") keeping in view the judgment of the Apex Court in the case of **State of Uttaranchal Vs. Balwant Singh Chaufal reported in (2010) 3 SCC 402**. For the sake of convenience Sub Rule (3-A) is reproduced below:-

"(3-A) In addition to satisfying the requirements of the other rules in this chapter, the petitioner seeking to file a Public Interest

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*Litigation, should precisely and specifically state, in the affidavit to be sworn by him giving his **credentials**, the public cause he is seeking to espouse; that he has no personal or private interest in the matter; that there is no authoritative pronouncement by the Supreme Court or High Court on the question raised; and that the result of the litigation will not lead to any undue gain to himself or anyone associated with him, or any undue loss to any person, body of persons or the State."*

12. Sri Suresh Kumar Gupta except for mentioning that he is well known public spirited social activist who is contributing the society/nation in all possible ways, has not stated anything covering any of the aforesaid essential requirements as indicated in Sub Rule 3-A of the Rules, 1952 meaning thereby he has not disclosed his "credentials" anywhere.

13. This aspect of the matter has been considered by a Division Bench of this Court in the case of **Narendra Kumar Yadav Vs. State of U.P and ors** decided on 05.11.2020 in P.I.L Civil No. 19497 of 2020 wherein on the point of "credentials" the Division Bench has held as under:-

"The dictionary meaning of the word 'credentials' is the qualities and the experience of a person that make him suitable for doing a particular job. The Oxford English-English-Hindi Dictionary, 2nd Edition, explains credentials as the quality which makes a person perfect for the job or a document that is a proof that he has the training and education necessary to prove that he is a person qualified for doing the particular job.

The petitioner herein claims to be a Social Worker, but in order to substantiate the nature of the social work he is doing or seeks to do, he has not disclosed any experience that makes him suitable or perfect for doing the said job and no document in proof has been furnished.

Black's Law Dictionary, 10th edition, defines 'credential' a document or other evidence that proves one's authority or expertise; a testimonial that a person is entitled to credit or to the right to exercise official power.

The petitioner, in the absence of any documentary proof to establish his authority or expertise in doing social work, does not have the requisite credentials to initiate petition in Public Interest.

Considering the aforesaid definition(s) of the term 'credential' and

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the law on entertaining the PIL what we feel is that for maintaining the PIL the petitioner in the writ petition, in brief, should state, with proof, that what he has done and what expertise he has on the subject matter of PIL as also that what exercise (sufficient) has been carried out by the petitioner before the administration prior to knocking the door of the Court and that what injury would be caused to the downtrodden of the society or public at large if cause under PIL is not espoused by the Court."

14. Considering the aforesaid dictum of law as laid down by this Court in the case of **Narendra Kumar Yadav (supra)** it is apparent that Sri Suresh Kumar Gupta has not disclosed his credentials and thus the instant petition deserves to be dismissed on this ground also.

15. Another aspect which confronts the Court is that the instant petition has been filed on the basis of newspaper reports. Whether a PIL can be filed solely on the basis of the news reports has already engaged the attention of the Apex Court in the case of **Holicow Pictures Private Limited Vs. Prem Chandra Mishra and Ors** reported in **(2007) SCC Online SC 1485** wherein the Apex Court has held as under:-

"19. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that Courts are flooded with large number of so called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in large number of cases, yet unmindful of the real intentions and objectives, Courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. It is also noticed that petitions are based on newspaper reports without any attempt to verify their authenticity. 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 afore-stated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts."

16. Likewise, the Apex Court in the case of **Kushum Lata Vs. Union of India** reported in **(2006) 6 SCC 180** has held as under:-

"...It is also noticed that petitions are based on newspaper reports without any attempt to verify their authenticity. 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 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 afore- stated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts."

17. Considering the aforesaid law as laid down by the Apex Court in the case of **Holicow Pictures Private Limited and Kushum Lata (supra)** and considering that the instant PIL has only been filed on the basis of newspaper reports, we hold that the present PIL would not be maintainable.

18. Before parting with the case we may also indicate that on all parameters as have been laid down by the Apex Court of filing of a PIL, the instant writ petition in the nature of PIL has failed to meet the parameters. Thus, it can clearly be said that instead of a Public Interest Litigation, the instant writ petition has been filed more for seeking publicity than for any other purpose.

19. Consequently, while dismissing the petition we also impose a token cost of Rs. 10,000/- on Sri Suresh Kumar Gupta for having wasted the precious judicial time of the Court. Let such cost be deposited with the High Court Legal Service Sub- Committee, Lucknow within 30 days failing which the cost shall be recovered as arrears of land revenue by the District Magistrate, Lucknow.

20. Let a copy of this order be sent to the District Magistrate, Lucknow for necessary action.

Order Date :- 13.9.2021/Pachhere/-