

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CJ Court

Case: WP(C) PIL 8 of 2021

Nikhil Padha, Human Rights Activist ...Petitioner(s)/Appellant(s)

Through: Petitioner present in person

V/s

Chairman Human Rights Commission Respondent(s)

Through: Sh. D. C. Raina, Advocate General

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

ORDER

01. The sole petitioner Nikhil Padha, who claims himself to be a student of law and an ardent human rights activist has preferred this petition in public interest seeking the following reliefs:

“That these cells, Jammu and Kashmir Human Rights Commission, Jammu and Kashmir Women Commission, Jammu and Kashmir Accountability Commission, are reopened to adjudicate the pending cases.

AND/OR

That the trials of the pending 765 cases above mentioned are re-opened and continued till the final state of adjudication

AND/OR

That the Union Territory of Jammu and Kashmir exercise its powers for the institution of an independent and separate body set up in the Union Territory of Jammu and Kashmir spread across the region in three branches at Jammu, Kashmir and Chenab Region for the reasons above mentioned.

AND/OR

That a separate reporting agency is instituted consisting of at least 1 judicial member to record the cases of human rights violation.

AND/OR

That there may be issuance any other order or direction which is deemed fit and proper in the fact and circumstances, in the interest of justice”.

02. One of the reliefs is to reopen J&K Human Rights Commission, J&K Women Commission, J&K Accountability Commission and J&K State Information Commission to adjudicate the pending cases. It is alleged that the aforesaid Commission/Foras have been closed down after the abrogation of Article 370 vide various Government Orders, one of which is G.O No. 1143-GAD of 2019 dated 23.10.2019 whereby J&K State Human Rights Commission was ordered to be wound up w.e.f 31.10.2019. It is also alleged that 765 cases are pending for adjudication before the J&K State Human Rights Commission, out of which, 267 cases are against military, para-military and police forces.

03. The petition as drafted appears to be on behalf of more than one person as the sole petitioner has been shown as petitioner No. 1 and the plural form has been used throughout in context with the petitioner. The very first paragraph states “*one of the petitioner is a student of law*” which means there are other petitioners as well but in fact there is none. This apparently shows that the petition as originally drafted was on behalf of more than one person but hurriedly the names of the other petitioners were removed for the reasons not known.

04. The petitioner has appeared in person and on enquiry made stated that he has passed law this very year from the Jammu University. His age as per the affidavit is 25 years. He proclaims himself be a human rights activist as per the cause title of the petition as also as per the averments contained in paragraph 1 of the writ petition.

05. We fail to understand how a law student or who has passed law recently can be recognized as an ardent human rights activist as proclaimed by the petitioner. The petitioner has not disclosed any of his activity which may indicate that he is actually involved in the protection human rights of the citizens or that he is an acclaimed human rights activist despite his tender age.

06. The narration of the facts in the writ petition reveals that the petitioner is not a bonafide person but is a proxy person setup by someone to initiate this litigation in public interest. The averments made in the petition reveal that the petitioner is not really interested in the establishment of the above foras but to attack the government over the deletion of the special status granted to the J&K. He has targeted the government by alleging cases of army brutality being on the rise in the Union Territory, applicability of draconian laws, hike of the unknown gunman culture in the Union Territory ever since the abrogation of Article 370, making of the Kashmir region into a complete war zone and of significant youth unrest in the Union Territory after the scrapping of Article 370. He has also referred to the big win of Gupkar Alliance in the recent DDC elections.

07. All the above facts in the manner as stated are highly critical of Government as if the petitioner is not before a legal forum but on a political platform. The petitioner by making the above averments tends to scandalize the court so as to score a political mileage.

08. It is worth noting in context with the Public Interest Litigation that PIL is not a Pill for every ill and it should not be entertained if the bona fides of the persons are in doubt.¹ It is equally settled that a PIL should not be allowed to be

1. AIR 2018 SC 2855 : *Seema Upadhyay Vs. Union of India*

filed to abuse the process of law and if the pleadings are vexatious, misconceived, unfounded and untenable.²

09. The Apex Court in one of the cases has clearly ruled that when a political rival complains against the other political party or person it would not be a bonafide litigation at the behest of the opponent and that such petitions in public interest ought not to be entertained.³

10. This apart, we also noticed the demeanor of the petitioner while presenting the case which clearly reflected that he has been setup politically to unnecessarily make out international issue of human rights violation.

11. It is pertinent to mention that for the issuance of the writ in the nature of mandamus as sought for by the petitioner, it is essential that the petitioner should first approach the relevant competent authorities for satisfying his grievances and it is only when he fails to achieve the same, that he can approach the High Court in exercise of its extraordinary discretionary jurisdiction. It must be shown by evidence that there was a distinct demand and that it was met by a refusal by the authority concern.⁴ The petitioner has not produced any material to show that his demand as aforesaid was not considered or refused.

12. It may be worth noting that none of the complainants of the pending cases have ever approached this Court for the adjudication of their claims pending before the J&K Human Rights Commission which has been wound up.

13. In view of the aforesaid facts and circumstances, we do not deem it necessary to exercise our discretionary jurisdiction in the matter and thus decline to entertain this petition.

2. AIR 2018 SC 86) : *Manohar Lal Sharma vs Sanjay Leela Bhansali*

3. AIR 2007 SC (Supple.) 163) : *Vishwanath Chaturvedi vs Union of India*

4. AIR 1975 SC 460 : *Sarswati Industrial Syndicate Ltd. v. UOI*

14. It is accordingly dismissed with a token costs of Rs 10,000/- as the petitioner is a law graduate who has passed out recently. The costs shall be deposited with the Registrar Judicial of the High Court and be utilized for the benefit of the litigants.

15. We, however, expect the Government/ respondents to take respective steps in the right earnest to revive the above institutions at the earliest.

16. The writ petition is accordingly dismissed with the above observation.

(RAJNESH OSWAL)
JUDGE

(PANKAJ MITHAL)
CHIEF JUSTICE

Jammu
08.09.2021
Sunita

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No

