

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C)(PIL) No. 23 of 2019

Sri Nishan Tripura,

----- Petitioner(s)

Versus

- 1. The Secretary,**
Department of Health, Government of Tripura, P.O. New Secretariat Complex,
P.S. New Capital Complex, Kunjaban, Agartala, Tripura, Pin 799010.
- 2. The Director of Health Services,**
Government of Tripura, Gurkhabasti, P.O. Kunjaban, P.S. New Capital Complex,
Kunjaban, Agartala, Tripura, Pin 799006.
- 3. The Director of Audit,**
Government of Tripura, Gurkhabasti, P.O. Kunjaban, P.S. New Capital Complex,
Kunjaban, Agartala, Tripura, Pin 799006.

-----Respondent(s)

For Petitioner(s)	:	Mr. A. Debbarma, Adv.
For Respondent(s)	:	Mr. M. Debbarma, Addl. GA.
Date of Hearing	:	25th January, 2022.
Date of Pronouncement	:	21st March, 2022.
Whether fit for reporting	:	YES

B E F O R E
HON'BLE THE CHIEF JUSTICE MR. INDRAJIT MAHANTY
HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY

JUDGMENT & ORDER

[Per S.G. Chattopadhyay], J

This writ petition under Article 226 of the Constitution of India has been filed by the petitioner making allegations of misuse and defalcation of public funds during implementation of various health schemes by the State officials and others which has been registered as a Public Interest Litigation (PIL).

[2] The basic facts and controversy brought before this Court are as follows:

From newspaper reports and the report of internal audit conducted by the Senior Audit Officer of the State Directorate of Audit for the period from 01.04.2006 to 31.03.2015 and from various other documents supplied to the petitioner under the Right to Information Act, 2005, petitioner came to know that various irregularities were committed and huge amount of fund was misused and defalcated by the officers involved in the implementation of ASHA training and various other health schemes across the State. Seeking intervention of Court, petitioner has filed this public interest petition and sought for the following directions:

(i) To call for the relevant records from the custody of the State respondents.

(ii) To issue direction to the State respondents to initiate departmental proceedings against all Government officials who were found involved in the scam and recover the defalcated amount of money from the delinquent officials in terms of the audit report submitted by the State Audit Directorate.

(iii) To cancel re-employment given to some of the delinquent officials.

[3] By filing counter affidavit sworn by the Under Secretary to the Government of Tripura in the Health and Family Welfare Department, the State respondents have contended that some discrepancies are reported by the Audit Directorate in their report which is under the scrutiny of the State Government. In the process of scrutiny, reports have been called for from various Primary Health Centre (PHC), Community Health Centre (CHC) and other officials involved in the implementation of various health schemes including Janani Suraksha Yojana and

ASHA training programme. With regard to re-employment of retired medical officers and other Government officials, it has been contended by the State respondents in their counter affidavit that in view of the shortage of medical officers in various hospitals and health centres across the State, the State Government has re-employed some of the retired medical officers who were found physically fit to continue beyond retirement.

[4] Heard Mr. A. Debbarma, learned advocate appearing for the petitioner as well as Mr. M. Debbarma, learned Addl. GA appearing for the State respondents.

[5] Counsel appearing for the petitioner contends that gross misuse of public money has been reported by the Directorate of Audit, Government of Tripura in their internal audit report dated 18.01.2016. The State Government has not taken adequate actions against the erring officials involved in the scam. Counsel, therefore, urges the Court for issuing directions to the State authorities to book the offenders and take punitive measures against them.

[6] Mr. M. Debbarma, learned Addl. GA appearing for the State respondents on the other hand contends that petitioner has no *locus standi* to file this public interest petition. The State counsel further contends that the audit report is under the scrutiny of the State Government and pursuant to the report, the State Government will take required corrective measures. It is further contended by Mr. Debbarma, learned State counsel that the petitioner has filed this petition with *mala fide* intention and oblique consideration. Learned State counsel, therefore, urges for dismissal of his petition.

[7] Considered the submissions made by learned counsel representing the parties and perused the record.

[8] Before taking up other issues for consideration, it would be appropriate to examine the merits of the objections raised by the State counsel with regard to the *locus standi* of the petitioner in filing this writ petition as a public interest litigation.

[9] In the affidavit sworn by him on 30.09.2019 which has been annexed to his petition, petitioner has stated that he has no personal interest in the litigation and neither himself nor anyone through him would be benefitted from this litigation. It has been stated that the petition has been filed by him as a member of public to further public interest. This Court having observed that the petitioner did not give any details of his background or activities, directed him by order dated 02.03.2021 to furnish the details of his background and activities. Pursuant to such order, petitioner filed such information before this Court.

[10] Even though no comprehensive guidelines on the issue of *locus standi* have yet been evolved, the legal capacity of a party to any litigation whether in private or public action in relation to the remedies as sought for has to be ascertained at the threshold. On this issue, we can profitably reproduce the following extract of the judgment of the Apex Court in ***Janata Dal vs. H.S.***

Chowdhary and Ors. reported in **(1992) 4 SCC 305** which reads as under:

"61. Though it is imperative to lay down clear guidelines and propositions; and outline the correct parameters for entertaining a Public Interest Litigation - particularly on the issue of locus standi yet no hard and fast rules have yet been formulated and no comprehensive guidelines have been evolved. There is also one view that such adumbration is not possible and it would not be expedient to lay down any general rule which would govern all cases under all circumstances.

62. Be that as it may, it is needless to emphasise that the requirement of locus standi of a party to a litigation is mandatory; because the legal capacity of the party to any litigation whether in private or public action in relation to any specific remedy sought for has to be primarily ascertained at the threshold.

63. *The traditional syntax of law in regard to locus standi for a specific judicial redress, sought by an individual person or determinate class or identifiable group of persons, is available only to that person or class or group of persons who has or have suffered a legal injury by reasons of violation of his or their legal right or a right legally protected, the invasion of which gives rise to actionability within the categories of law. In a private action, the litigation is bipolar; two opposed parties are locked in a confrontational controversy which pertains to the determination of the legal consequences of past events unlike in public action. The character of such litigation is essentially that of vindicating private rights, proceedings being brought by the persons in whom the right personally inhere on their legally constituted representatives who are thus obviously most competent to commence the litigation.*

64. *In contrast, the strict rule of locus standi applicable to private litigation is relaxed and a broad rule is evolved which gives the right of locus standi to any member of the public acting bona fide and having sufficient interest in instituting an action for redressal of public wrong or public injury, but who is not a mere busybody or a meddlesome interloper; since the dominant object of PIL is to ensure observance of the provisions of the Constitution or the law which can be best achieved to advance the cause of community or disadvantaged groups and individuals or public interest by permitting any person, having no personal gain or private motivation or any other oblique consideration but acting bona fide and having sufficient interest in maintaining an action for judicial redress for public injury to put the judicial machinery in motion like actio popularis of Roman Law whereby any citizen could bring such an action in respect of a public delict."*

[11] The Apex Court, in the said decision, also observed that their cannot be an exhaustive list of circumstances justifying the entertaining of public interest litigation and held as follows:

"90. It may not be out of place to mention here that there may be numerous circumstances justifying the entertaining of public interest litigation but we cannot obviously enumerate an exhaustive list of all such situations."

[12] On the same issue, the Apex Court also ruled that vexatious petitions under the colour of PIL for personal gain or private profit or political motive deserved rejection at the threshold. In this regard, the Apex Court in the

said case of **Janata Dal (Supra)** recalled its decision in **S.P. Gupta vs. Union of India** reported in **1981 (Supp) SCC 87** and held as follows:

"99. in Gupta's case [1981 (Supp) SCC 87] Bhagwati, J. emphatically pointed out that the relaxation of the rule of locus standi in the field of PIL does not give any right to a busybody or meddling interloper to approach the court under the guise of a public interest litigant. He has also left the following note of caution:

"But we must be careful to see that the member of the public, who approaches the court in cases of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration. The court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective."

[13] This High Court in the case of **Chandra Sekhar Sinha vs. State of Tripura & Ors.** reported in **(2020) 2 TLR 524** also dwelt on the issue and held as under:

"27. The principle of law emanating from the cited judgments is that any member of the public acting bona fide and having sufficient interest in an action for redressal of public wrong or public injury arising out of the breach of constitutional provisions or the law can approach the court in a public interest litigation and while entertaining such petition the court has a duty to see that the person who approaches the court in a case of this kind is acting bona fide and not for any personal gain or private profit or political motivation or other oblique consideration."

[14] In the present case, the State counsel has not been able to attribute any *mala fide* to the petitioner. Even, there is no material to suggest that the petitioner is acting in furtherance of any personal gain or private profit or for any political motive. Moreover, the petitioner having relied on an official document has contended that misuse and defalcation of public money has been detected in the audit report furnished by the Audit Directorate of the State Government. The State respondents in their counter affidavit has also admitted that some

discrepancies with regard to utilization of fund have been highlighted in the audit report.

[15] In these circumstances, where some allegations of misuse and defalcation of public money during implementation of health schemes have been brought to the notice of this Court, it would not be appropriate to reject the petition at the threshold on the ground of petitioner's having no *locus standi*.

[16] At the same time it is apparent that except the audit report, petitioner has not been able to produce any other cogent materials in support of the statements made in the petition. As discussed, the audit report is stated to be under the scrutiny of the State Government for corrective measures. The internal audit report, a copy of which has been placed before us reveals that mainly following irregularities were noticed by the audit team during the internal audit conducted by them:

(i) Non maintenance of proper accounts of expenditure made under various schemes.

(ii) Non maintenance and non production of vouchers before the audit team.

(iii) Non maintenance of cash book and cash analysis.

(iv) Irregular payment.

(v) Execution of various works without administrative approval and expenditure sanction by the competent authority.

(vi) Non certification of the works by the supervising officers against which bills were submitted and paid.

(vii) Non observance of codal formalities and financial rules and regulations.

[17] The audit report is submitted by an authority created by the State Government. As submitted by the State counsel, State Government is considering the report with due importance and required corrective measures will be taken soon by the State Government.

[18] In this view of the matter, we issue the following directions:

(i) The State Government at the appropriate level shall complete scrutiny of the audit report and take appropriate actions against those who will be found responsible for the breaches within a period of 4 (four) months from today.

(ii) The State Government shall take appropriate preventive measures to prevent recurrence of such events.

[19] In terms of the above, the petition stands disposed of. Pending application(s), if any, shall also stand disposed of.

(S.G. CHATTOPADHYAY), J

(INDRAJIT MAHANTY), CJ

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