

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

Dated : 15<sup>th</sup> May, 2025

DIVISION BENCH : THE HON'BLE MR. JUSTICE BISWANATH SOMADDER, CHIEF JUSTICE  
THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

WP (PIL) No.01 of 2024

Petitioner : Mani Kumar Subba

versus

Respondents : State of Sikkim and Others

Application under Article 226 of  
the Constitution of India

Appearance

Mr. Anindya Basu, Mr. Yam Kumar Subba and Mr. Mukkum Hang Limboo, Advocates for the Petitioner.

Mr. Basava Prabhu S. Patil, Advocate General, Mr. Zangpo Sherpa, Additional Advocate General with Mr. Thinlay Dorjee Bhutia, Government Advocate for the Respondents No.1 to 3.

None present for the Respondent No.4.

Mr. Anubhav Sinha, Ms. Dhatri Bandaru and Mr. Rinzing Dorjee Tamang, Advocates for the Respondents No.5 and 7.

Mr. Sujan Sunwar, Assistant Government Advocate for the Respondent No.6.

Mr. Sudhir Prasad, Advocate for the Respondent No.8.

Ms. Sangita Pradhan, Deputy Solicitor General of India assisted by Ms. Sittal Balmiki and Ms. Natasha Pradhan, Advocates for the Respondents No.9 to 11.

None present for the Respondents No.12 and 13.

JUDGMENT

Meenakshi Madan Rai, J.

1. The petitioner by way of this Public Interest Litigation seeks a writ of mandamus or other appropriate writs/direction for quashing the impugned decision of the Cabinet, dated 03-02-2024, of the respondent no.1, where it was decided to disinvest 60.08% equity share of respondent no.6 [Sikkim Power Investment Corporation Limited (SPICL)], in respondent no.5 [M/s Sikkim Urja Limited (SUL)] to respondent no.8 (M/s Greenko Enterprises Private Limited), along with disinvestment of respondent no.7

(Sikkim Power Valley Transmission Limited, now Power Valley Transmission Limited). According to the petitioner, this is in contravention of the hydro policy of the respondent no.1, State of Sikkim, as contained in the letter of intent issued to the respondent no.4 (M/s Athena Projects Pvt. Ltd.), by the respondent no.2 (Power Department, Government of Sikkim) and the implementation agreement, dated 18-07-2005, between the respondent no.1 (State of Sikkim) and respondent no.5 (SUL), concerning the development of 1200 Megawatts (MW), Teesta — III Hydro Electric Project, at Chungthang, Rule 27 of the Sikkim Financial (Amendment) Rules, 2006, Office Memoranda dated 19-04-2022 and 14-09-2022 and against prescribed procedure for disinvestment.

**2.** Vide order dated 14-03-2024, this Court *inter alia* ordered that; “..... We make it clear that all points raised by the learned Advocate General including the point of maintainability of the writ petition as a Public Interest Litigation are kept open to be decided at the time of final hearing of the writ petition. ....”. The point of maintainability is accordingly taken up.

**3.** Learned counsel for the petitioner canvassed the contention that the petitioner, a citizen of India and a resident of Sikkim, is involved in public life and at the time of filing the writ petition was holding the post of the chief spokesperson of the longest serving party in the State, i.e., Sikkim Democratic Front Party. The petitioner has no personal or private motive in filing the instant petition, which is against the impugned Cabinet decision, dated 03-02-2024, which is arbitrary, illegal, unreasonable and against public interest. The project (*supra*) was generating high

revenue for the State till the Dam was destroyed by flash floods, which occurred on the intervening night of 3<sup>rd</sup> and 4<sup>th</sup> October, 2023, due to the outburst of the South Lonak Lake. The State Government bypassed the disinvestment policy, which, *inter alia*, postulates selection of Advisors, advertisement in newspapers inviting bidders, valuation of the PSU, recommendation of the Cabinet Committee on Disinvestment, discussion with the Advisor and ultimately reporting the matter to the Accountant General of India. After the State Cabinet cleared the disinvestment proposal, the selection was to have been made through competitive bidding, which was ignored. It was further urged that, the disinvestment was contrary to the office memorandum, dated 19-04-2022, of the Department of Investment and Public Asset Management Disinvestment (DIPAM), Ministry of Finance, Government of India, on participation of Public Sector Enterprises (PSEs) [Central/State/Joint]/State Governments/Cooperative Societies controlled by the Governments in strategic disinvestment of other public sector enterprises. The decision to disinvest was also contrary to the office memorandum, dated 14-09-2022, on "Guiding principles for strategic disinvestment/ minority stake sale of subsidiaries/units/sale of stake/JVs by the holding/parent PSE". That, the decision was *de hors* the points of discussion held in the meeting between the Hon'ble Minister of Power & NRE and the Hon'ble Chief Minister, on 06-12-2023. The hasty decision of the State Government has enriched respondent no.8 (M/s Greenko Enterprises Private Limited), which while being against public interest, has infringed the rights of the Sikkimese and led to huge financial loss to the State Exchequer. The general principles of Rule 27 of the Sikkim Financial (Amendment) Rules, 2006, were

overlooked which envisages that whenever practicable and advantageous, allocation of projects should be through a tender process. Whenever a tender other than the lowest is to be accepted, the reasons thereof should be recorded and decisions taken only after such reasons have been accepted by the authority competent to approve the contract. In the circumstances, there is every likelihood of defalcation of public money having occurred on account of the Cabinet decision, *sans* compliance of the prescribed procedure of disinvestment. The decision is being arbitrary, illegal is liable to be quashed, hence the petition. To buttress his submissions reliance was placed on ***Balco Employees' Union (Regd.) vs. Union of India and Others***<sup>1</sup>, ***Centre for Public Interest Litigation and Others vs. Union of India and Others***<sup>2</sup>, ***Tehseen Poonawalla vs. Union of India and Another***<sup>3</sup> and ***Vishwanath Chaturvedi(3) vs. Union of India and Others***<sup>4</sup>.

**4.** Learned Advocate General for the respondents no.1 to 3, resisting the stand of the petitioner, contended that, the Public Interest Litigation is a politically motivated petition having been filed immediately prior to the general elections of 2024 with the oblique motive of gaining political mileage. That, the instant petition does not fulfil the requisite criteria of a Public Interest Litigation as set out in Rule (iv) of the High Court of Sikkim, Public Interest Litigation Rules, 2010. On this ground alone, it is liable to be dismissed at the threshold. The petition it was argued, lacks *bona fides* as the petitioner was the chief spokesperson of a political party, which is the main opposition to the ruling party and is apparently Private Interest Litigation, instituted to achieve the petitioner's own political ends. The petitioner has set out an

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<sup>1</sup> (2002) 2 SCC 333

<sup>2</sup> (2013) 3 SCC 1

<sup>3</sup> (2018) 6 SCC 72

<sup>4</sup> (2007) 4 SCC 380

incorrect shareholding structure of the respondent no.5 (SUL) and has suppressed the contractual obligations of the Government of Sikkim. It was explained that, Rule 27(1) of the Sikkim Financial (Amendment) Rules, 2006, deals with contract entered into by any authority which has not been empowered to do by the Government but does not deal with disinvestment. That, the Government of Sikkim in no way acted contrary to the interest of the people and the decision for disinvestment was taken as per procedure prescribed with due consideration to Articles 168 and 169 of the Articles of Association, vide which, the tender could not have been openly invited. The challenge to the Cabinet decision by the petitioner on grounds of non-compliance with the general principles of disinvestment was erroneous, as the procedure specified therein has to be followed by the Central Government and not by the State Governments. That, the allegation of non-compliance of the Office Memorandum dated 19-04-2022 and 14-09-2022, issued by the Ministry of Finance, Department of Investment and Public Asset Management (DIPAM), Government of India, is misplaced as it has no bearing to the decision of the State Government to disinvest its stake. Having approached the Court with unclean hands, the conduct of the petitioner disentitles him to any relief and the petition not being maintainable and deserves a dismissal. On this count, reliance was placed on ***Dalip Singh vs. State of Uttar Pradesh and Others***<sup>5</sup>.

**5.** Learned counsel for the respondent no.5 (SUL) put forth the contention that the grounds of challenge are vague as the petitioner was unable, in the course of hearing, to explain his benevolent intentions and public purpose which he seeks to

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<sup>5</sup> (2010) 2 SCC 114

achieve from the instant petition. That, the sale of the shares by the Government of Sikkim, cannot be viewed in isolation and is an action purely in the public domain. The Shareholders' Agreement had both respondent no.8 (M/s Greenko Enterprises Private Limited) and the Government of Sikkim as shareholders, who clearly contemplated the sale of shares between different shareholders. That, such agreement and clauses contemplating such sale of shares was never challenged by any person. The Courts have been clear that petitions filed for political gains should not be looked into, reliance on this facet was placed on a catena of decisions of the Supreme Court. It was sought to be pointed out that the instant petition has been filed to disrupt the disinvestment process merely to leverage political gains with the intention of creating a platform for one-upmanship against the incumbent Government. The petitioner has failed to substantiate the public interest being espoused by him. That, the Supreme Court in **Balco Employees' Union (Regd.)** (*supra*) has propounded that the policy of the Government regarding disinvestment in a public sector undertaking, being an economic decision, cannot be challenged in a Public Interest Litigation. It was observed that the decision to disinvest is purely an administrative decision relating to the economic policy of the State and challenge to the same at the instance of a busy body cannot fall with the parameters of a Public Interest Litigation. Similarly, in the instant matter the decision being economic and administrative cannot be challenged in a Public Interest Litigation by a politically motivated person. Hence, the petition be dismissed.

**6.** Having heard the submissions advanced by Learned Counsel for the parties at length, it is worth remarking that Public

Interest Litigation is that class of litigation where the public in general are interested, perceiving that public interest has been undermined by arbitrary or perverse executive action, which requires vindication of some right or the enforcement of some public duty. The Court, however, is to be *prima facie* satisfied that the information laid before the Court is of such a nature that it calls for examination. Public Interest Litigation is not a pill or a panacea for all wrongs. It was essentially meant to protect basic human rights of the weak and the disadvantaged and was a procedure which was innovated where a public-spirited person files a petition, on behalf of such persons, who on account of poverty, helplessness or economic and social disabilities could not approach the Court for relief [See ***R & M Trust vs. Koramangala Residents Vigilance Group and Others***<sup>6</sup>].

(i) In ***S. P. Gupta vs. Union of India and Another***<sup>7</sup>, the Supreme Court cautioned as follow;

"24. 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. Andre Rabie has warned that "political pressure groups who could not achieve their aims through the administrative process" and we might add, through the political process, "may try to use the courts to further their aims". These are some of the dangers in public interest litigation which the court has to be careful to avoid. It is also necessary for the court to bear in mind that there is a vital distinction between *locus standi* and justiciability and it is not every default on the part of the State or a public authority that is justiciable. The court must take care to see that it does not overstep the limits of its judicial function and trespass into areas which are reserved to the Executive and the legislature by the Constitution. ...."

(ii) It is only when Courts are apprised of gross violation of fundamental rights by a group or a class action or when basic

<sup>6</sup> (2005) 3 SCC 91

<sup>7</sup> (1981) Supp SCC 87

human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the Courts, especially this Court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the underdog and the neglected [See **Sachidanand Pandey and Another vs. State of West Bengal and Other**<sup>8</sup>].

**(iii)** While referring to the case of **Balco Employees' Union (Regd.)** (*supra*, relied on by the petitioner), the validity of the decision of the Union to disinvest and transfer 51% shares of M/s Bharat Aluminium Company Limited (BALCO) was the primary issue. The Supreme Court observed *inter alia* that it is neither within the domain of the Courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or better public policy can be evolved. Nor should the Courts be inclined to strike down a policy at the behest of a petitioner, merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. It was observed that merely because the workmen of BALCO may have the protection of Articles 14 and 16 of the Constitution of India, by regarding BALCO as a State, it did not mean that the erstwhile sole shareholder *viz.*, Government had to give the workers prior notice of hearing before deciding to disinvest. That, there is no principle of natural justice which requires prior notice and hearing to persons who are generally affected as a class by an economic policy decision of the Government. The existence of rights under Articles 14 and 16 of the Constitution of India cannot possibly have the effect of vetoing the Government's right to disinvest nor can

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<sup>8</sup> (1987) 2 SCC 295



the employee claim a right of continuous consultation at the various stages of the disinvestment process, if it has been gone through, without contravening any law. The change in economic climate, the wisdom and manner for the Government to run commercial ventures may require reconsideration and what may have been in public interest at a point of time may no longer be so.

**(iv)** It is settled law that information given in a Public Interest Litigation cannot be vague or indefinite and the Court is to be circumspect in assessing that under the guise of redressing a public grievance it does not encroach upon the field reserved by the Constitution for the executive and the legislature. The person who approaches the Court must be acting *bona fide* and not for personal gain or private profit or political motivation or other oblique consideration. More importantly, Courts in the exercise of their jurisdiction will not transgress into the field of policy decision, while at the same time exercising its duty to examine that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon.

**7.** On the anvil of such pronouncements, when we examine the records placed before us and consider the submissions advanced by learned counsel for the parties, indubitably the petitioner is the chief spokesperson of one of the main opposition political parties in the State. As already pointed out by learned Advocate General for the respondents No.1 to 3 in their averments, the petitioner has not disclosed any credentials regarding his involvement in furthering any public cause. The petition was also filed just before the General Elections in the State, which were to be held in 2024, clearly indicating an oblique motive in filing the said petition, considering the petitioner's political inclination. It

needs no emphasis that a petitioner filing a Public Interest Litigation is to specifically disclose his credentials and his direct or indirect personal motive or interest involved in the case, if any, by way of an affidavit. His petition must set forth what he does for a living, what public interest he has been espousing, the work done by him for such cause and the particulars of any matter preferred by him as Public Interest Litigation earlier. He cannot merely file a Public Interest Litigation by stating that he is a citizen of India and involved in public life. His contribution must be indicated to the Court. From the records, there is no disclosure whatsoever as to what public interest he was espousing, the work done by him for such cause or his contribution to society at large. This Court, being a Court of record, has also taken into consideration that earlier WP (PIL) No.03 of 2023 (*Mani Kumar Subba vs. State of Sikkim and Others*) had been filed by the petitioner herein, concerning the natural disaster, which occurred in Sikkim, on the intervening night of 3<sup>rd</sup> and 4<sup>th</sup> of October, 2023, resulting in loss of lives and properties due to massive flooding of the river Teesta, which was probably caused by a glacial lake outburst that occurred in the upper reaches of the Himalayas. The petitioner, while seeking a writ of mandamus or any other appropriate writs, directions of this Court, had contended that despite the clear classification of the South Lonak Lake and Chungthang, as high Glacial Lake Outburst Floods (GLOFs) hazard, failed to constitute the "State Committee on Dam Safety" under Section 11 of the Dam Safety Act, 2021, non-compliance of which led to huge loss and damages to life and properties, including destruction of the Teesta Stage – III Dam. It was his case, the State Government had framed no comprehensive policy and mechanism for management of GLOFs in accordance

with the National Disaster Management Plan, 2019, National Disaster Authority Guidelines Management of GLOFs, 2020 and Disaster Management Act, 2005. Vide the order dated 07-12-2023, this Court was of the view *inter alia* that, if indeed the writ petitioner was so concerned with public interest — especially with regard to the “State Committee on Dam Safety” not being constituted within 180 days from the date of commencement of the Dam Safety Act of 2021 — he ought to have approached this Court immediately after expiry of the said period of 180 days (i.e., six months), from the date of its coming into effect (i.e., 14<sup>th</sup> December, 2021), instead of waiting till the 5<sup>th</sup> of December, 2023, for the purpose of filing the writ petition as a “Public Interest Litigation”, once the natural disaster struck on the intervening night of 3<sup>rd</sup> and 4<sup>th</sup> of October, 2023. The Court observed that the writ petition filed was a Public Interest Litigation was thoroughly devoid of any merit and was liable to be summarily dismissed and was accordingly dismissed. The aforementioned circumstances make it necessary for this Court to consider whether the instant petition is above suspicion, based as it is on conjectures and surmises.

**(i)** In *Janata Dal vs. H. S. Chowdhary and Others*<sup>9</sup>, the Supreme Court pointed out as follows;

**“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.

.....  
*Vexatious and frivolous litigation*

**98.** While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly-developed doctrine of PIL, it has also hastened to sound a red alert and a note of severe warning that courts should not allow its process to be abused by a mere busybody or a meddlesome interloper or

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<sup>9</sup> (1992) 4 SCC 305

wayfarer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration.”

(ii) It is necessary to notice that in **State of Madhya Pradesh vs. Narmada Bachao Andolan and Another**<sup>10</sup>, the Supreme Court *inter alia* held that the standard of expectation of civic responsibility required of a petitioner in a Public Interest Litigation is higher than that of an applicant who strives to realise personal ends. The Courts expect a public interest litigant to discharge high standards of responsibility. Negligent use or use for oblique motives is extraneous to the Public Interest Litigation process and if that be so, the application will be rejected at the threshold. Measuring the gravity of the Public Interest Litigation petitioner and to examine whether the petitioner is actually a “champion” of the cause of the individual or the group being represented, is the responsibility of the Court. Only a person acting *bona fide* will alone have *locus standi* and approach the Court to ensure that there is no violation of fundamental rights.

**8.** We are alive to the fact that a petition should not be shut out at the threshold merely because a person with political differences with the ruling dispensation raises an issue. Nonetheless, it is imperative to point out that the Court is bound to analyse the locus of the petitioner as to whether he has come with clean hands, is acting *bona fide* and not with other oblique considerations, be it private or political. He who seeks equity must do equity.

**9.** It is no more *res integra* that judicial interference by way of orders in a Public Interest Litigation can be exercised only if the Courts detect dereliction of constitutional or statutory obligations that have injured public interest. Having considered

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<sup>10</sup> (2011) 7 SCC 639

the submissions advanced before us, we do not witness such a circumstance in the instant matter. It needs no reiteration that the Courts are not expected to interfere in the sphere of economic policy or reform nor can the Courts conduct the administration for the State, the only circumstance where the Courts can interfere is where there is violation of constitutional or statutory provisions and non-compliance thereof by the State.

**10.** In light of the foregoing detailed discussions and having considered the grounds canvassed by the petitioner, it is apparent that the petitioner cannot obliquely espouse his own cause in order to satisfy his personal grudges or settle political scores and expect this Court to intervene in respect of a valid Cabinet decision passed by the Political Executive, which we, for reasons stated above, are not inclined to interfere.

**11.** In the facts and circumstances elucidated hereinabove, the writ petition is not maintainable and is accordingly dismissed.

**( Meenakshi Madan Rai )**  
**Judge**

**( Biswanath Somadder )**  
**Chief Justice**

Approved for reporting : **Yes**