

A.F.R.

**High Court of Judicature at Allahabad
(Lucknow)**

Neutral Citation No. - 2024:AHC-LKO:45640-DB

Reserved on : 29.05.2024

Delivered on : 05.07.2024

Court No. - 2

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 35231 of 2018

Petitioner :- Satya Narain Shukla And Anr.

Respondent :- State Of U.P. Thru.Chief Secy. And Ors.

Counsel for Petitioner :- S. N. Shukla In Person,G.N. Pandey- In Person

Counsel for Respondent :- C.S.C.,A.S.G.,Sudhanshu Chauhan

Hon'ble Rajan Roy,J.

Hon'ble Om Prakash Shukla,J.

(Per : Om Prakash Shukla, J.)

(1) Heard Shri S.N.Shukla and Shri G.N. Pandey, petitioners-in-person, Shri Sudhanshu Chauhan, learned Counsel representing the respondents no. 3, 4 and Shri V.P. Nag, learned Standing Counsel representing the State/respondents no. 1 and 2.

(2) This petition styled as Public Interest Litigation was filed in the year 2018 seeking the following reliefs :-

1. issue a writ, order or direction in the nature of Mandamus to the respondents that the benefit of existing beneficiary oriented schemes meant exclusively for SCs/STs/OBCs and minorities be extended to below the poverty line (BPL) persons of all other communities/castes also who fulfill the eligibility criteria applicable to persons of SCs/STs/OBCs/Minorities.
2. Issue a writ, order or direction in the nature of Mandamus to the respondents that henceforth benefit of all beneficiary

oriented State assistance be given uniformly to poor citizens of all communities/castes also on the basis of economics and/or other verifiable objective criteria.

3. Issue such other writ, order or direction as may be deemed fit and proper in the facts and circumstances of the case to fulfill the constitutional mandate contained in the preamble, Article 14 and 21 and Part IV of the Constitution.”

(3) Petitioners, who appear in person, have submitted that the concept of the social and economic justice is to build a welfare state and the same has been recognised as a basic feature of our Constitution. According to them, without social and economic justice, there cannot be political justice and as a corollary, a just social order cannot be established without removing inequalities in income and status.

(4) To the aforesaid regard, petitioners have stressed on the wordings of Article 37 of the Constitution of India and have stated that Article 37 of the Constitution of India makes it clear that Directive Principles of the State Policies are fundamental in the governance of the country and it shall be duty of the State to apply these principles in making laws. Petitioners have also drawn our attention to Article 38 of the Constitution of India and have urged that since Article 38 of Constitution of India clearly mandates the State to secure a social order for the promotion of welfare of the people and the State shall strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities not only amongst

individuals but also amongst group of people residing in different areas or engaged in different vocations. Thus, their submission is that the denial of State economic assistance under the beneficiary oriented schemes for persons belonging to SCs/STs/OBCs and Minority Communities to indigent persons/families of general category meeting the eligibility criteria of these schemes, solely on the basis of caste/community, is in violation of their right to equality under Article 14 of the Constitution of India and as such, the same cannot be sustained in view of Article 13 of the Constitution.

- (5) Petitioners have also urged that apart from violation of the fundamental rights guaranteed under Article 14 and 21 of the Constitution, denial of State assistance being provided by the beneficiary oriented schemes for SCs/Stc/OBCs and minorities to the poor general category persons fulfilling the same eligibility criteria is also contrary the Preamble of the Constitution as well as the Directive Principles of State Policy contained in Article 37 and 38 of the Constitution of India. Thus, petitioners have prayed that the benefit of existing beneficiary oriented schemes meant exclusively for SCs/ STs/ OBCs and minorities be extended to below the poverty line (BPL) persons of all other communities/castes also who fulfil the eligibility criteria applicable to persons of SCs/STs/OBCs/ Minorities.

(6) On the other hand, placing reliance upon the decisions of the Apex Court in **State of Himachal Pradesh & Others V/s Satpal Saini** : (2017) 11 SCC 42 and **Census Commissioner and Others V/s R. Krishnamurthy**: (2015) 2 SCC 796, learned Standing Counsel stated that this petition styled as Public Interest Litigation is not maintainable. According to the learned Standing Counsel, the State of Uttar Pradesh is running several schemes for the upliftment of socially, economically and educationally backward classes, citizens and action is being taken for the same according to law. He stated that Samajwadi Pension Scheme, which was primarily based on caste and minority status of an individual, was abolished by the State Government and presently, State is operating the income ceiling based schemes for the welfare and development of the citizen of all sections of the Society through various schemes including ‘Vridhavastha Pension Scheme, Widow Pension Scheme, Divyangjan Pension Scheme, Leprosy Pension Scheme etc’. He further submits that the State Government is also running ‘Mukhyamantri Kishan evan Sarvhit Bima Yojna’, in which financial assistance is also being provided without any relation to any caste or community and to all those bread earner farmers of the State, who become temporarily/permanently disabled or in case of death, subject to fulfilling financial criteria. Further, various other schemes have also been initiated by the State Government, including ‘Mukhyamtri Krihsak Durghatana Kalyan Yojna, National Family benefit scheme (Rashtreey

Parivarik Labh Yojna), Chief Minister Abhyudaya Yojna etc. It has been also contended that the State Government is continuously working for the welfare of the citizen of the State and various beneficiary schemes are being operated for the upliftment of peoples of all section of the Society and the benefits of beneficiary schemes are being provided to all the sections of the society as far as possible.

- (7) Elaborating his submission, learned Standing Counsel has stated that sustainable development goals in the State are based on 16 Goals, 169 Targets and their related indicators. In this regard, a Committee has been constituted under the chairmanship of the Additional Chief Secretary/Principal Secretary, Social Welfare Department, Government of UP for reducing inequalities in the State as per the SDG Goal No.10 and the said Committee would complete the action through inter-departmental coordination for achieving target of Goals. According to the learned Standing Counsel, the State is also running several Schemes for the upliftment and development of weaker sections of the society and reducing the inequalities in the State and actions are being taken by the respective departments of the State Government of UP for the same according to law.
- (8) Placing reliance upon the decisions of the Apex Court in **Union of India Vs. M. Selvakumar** : (2017) 3 SCC 504, and **Rachna Vs. Union of India** : (2021) 5 SCC 638, learned Counsel

representing the respondent no.3 has submitted that in the present petition styled as Public Interest Litigation, no mandamus could be issued to frame a policy in a particular manner. It has been submitted that there is no averment of any breach of fundamental rights of any individual. According to the respondent no.3, relief sought is very vague and very generalized in nature. In this regard, he also placed reliance upon the decision of the Apex Court in **Lily Thomas Vs. Union of India** : AIR 2000 SC 1650.

- (9) Learned Counsel for the respondent No.4/NITI Ayog has submitted that it is settled law that no mandamus can be issued to frame a policy and it is not the domain of this Court to embark upon such an exercise. It has also been contended that the present petition styled as Public Interest Litigation and relief sought therein is vague as there is no mention of any specific scheme, which the petitioners have sought for the below poverty line and are already in existence for the SCs/STs/OBCs or minority communities. According to them, there are several schemes of the Government of India for economically weaker section of the society irrespective of the caste or creed for the benefit of the poor, like Mahatma Gandhi National Rural employment Guarantee Scheme, Ayushman Bharat Pradhan Mantri Jan Arogya Yojana, National Social Assistance Program, Prime Minister Awas Yojna, Deendayal Antyodaya Yojna etc. It has also been stated that vide 103rd amendment

published on 12.01.2019 of the Constitution of India, Article-15(6) and Article 16(5) have been incorporated in the Constitution of India and the benefit of reservation to the economically weaker sections of Citizens has also been extended for the purpose of admission in educational institutions including private educational institutions and in matters of public employment. It has also stated that the validity of the said amendment was also upheld by the Apex Court. Thus, according to them, the benefit of reservation in the field of education and public employment has already been extended to economically weaker sections of the society. It has been submitted that the States and the Union of India are implementing various schemes irrespective of caste or creed for benefit of poor communities. There are several schemes which are being implemented exclusively for SC, ST and OBC, which are primarily based on caste because it is indeed undisputed that the large chunk of population so excluded are also economically backward along with being socially and educationally backward.

- (10) Having regard to the submissions of the parties and going through the record available before us in this petition styled as Public Interest Litigation, what we find is that the relief sought by the petitioners at first blush appears to be an effort towards the achievement of objects of a welfare State and to do away

any distribution of State largesse based on caste rather it should be based on economic criteria.

- (11) However, the present petition was filed in the year 2018 and noticeably on 9th January, 2019, the Parliament of India enacted the Constitution (One Hundred and Third Amendment) Act, 2019 which enabled the State to make reservations in higher education and matters of public employment on the basis of economic criteria alone, a path taken averse to the judgment passed by the Hon'ble Supreme Court in *Indira Sawhney v. Union of India* : [1992 Suppl. (3) SCC. 217], which says that reservations cannot be based solely on economic criteria.
- (12) The 103rd Amendment Act amended Articles 15 and 16 of the Constitution by inserting 15(6) and 16(6), wherein Article 15(6) enables the State to make special provisions for the advancement of any economically weaker section of citizens, including reservations in educational institutions. It provided for reservations in any educational institution, including both aided and unaided private institutions, except minority educational institutions covered under Article 30(1) to the extent of 10% and this ceiling was to be independent of ceilings on existing reservations. Similarly, Article 16(6) enabled the State to make provisions for reservation in appointments for economical weaker section to the extent of 10% ceiling, in addition to the existing reservations. The said amendments were

subject to challenge before the Hon'ble Supreme Court in **Janhit Abhiyan v. Union of India** : 2022 SCC OnLine SC, wherein the Hon'ble Supreme Court declared that the Amendment and EWS Reservations were constitutionally valid.

- (13) During the course of hearing, the aforesaid change in circumstances was brought to the notice of the petitioners, however, they persistently argued that the issue raised by them is of a larger aspect and not covered by the 103rd amendment and raised the issue as to why the benefit of existing beneficiary oriented schemes meant exclusively for SC/ST/OBC and minorities cannot be extended exclusively to the below poverty line persons of all other communities, without any discrimination of caste or creed.
- (14) Admittedly, the PIL filed by the petitioners appears to be for the sole objective of putting forth a narrative that the provisions of all State assistance should be based on economic criteria only instead of on the basis of caste/community. However, in the entire petition or in the submission before this Court, neither any endeavour was made nor any material was produced before this Court as to which scheme already existing for the SCs/STs/OBCs/Minorities, the petitioner wants this Court to extend to the below poverty lines and as to how the said scheme was beneficial to the below poverty lines and not to the

SCs/STs/OBCs/Minorities or as to how the present writ could be maintainable, which primarily seeks an issuance of mandamus for devising of policy or rule making, which essentially is in the domain of the Executive/Legislature, as the case may be. Howsoever avowed the objective behind filing of this petition, the issues raise fall in the domain of the Executive/Legislature as they involve policy matters having far reaching consequences, therefore, the petitioners should pursue the same before the Executive/Legislature. We find ourselves handicapped considering the limits of the judicial review by Constitutional Courts in such matters.

- (15) In view of the consistent view of the Hon'ble Supreme Court on this issue, there can be no doubt that seeking changes in an existing policy or law of beneficiary oriented scheme meant exclusively for SCs/ STs/ OBCs and Minorities, so as to be extended to below the poverty line (BPL) persons of all other communities/castes including BPLs who belong to SCs/STs/OBCs/Minorities lies within the exclusive domain of the Executive or the Legislature and is a matter of policy.
- (16) It shall be open for the petitioners to give representations to the Central/State Government espousing their cause with relevant data and materials, which may assist the concerned Government in taking an objective view on the issues raised in the present petition or to canvass the same before the elected

representatives of the Parliament or State Legislature, as the case may be.

(17) With these observations, we **dispose of** this petition.

(Om Prakash Shukla, J.) (Rajan Roy, J.)

Order Date : 5th July, 2024

Ajit