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IN THE HON'BLE HIGH COURT OF JUDICATURE AT
ALLAHABAD LUCKNOW BENCH, LUCKNOW

C.M. Application No. of 2008

In re: 67624

Writ Petition No. 6748 of 2008 (M.B.) PIL

BANWARILAL ——— Petitioner/ Appellant
Versus

STATE OF U.P. & OTHERS Opposite parties

APPLICATION FOR TAKING ON RECORD THE
VAKALATNAMA ON BEHALF OF THE opp-parties No-6

The applicant most respectfully submits as under:-

1. That in the above noted case, I am filing vakalatnama on behalf of the opp-parties U.P. Pollution Control Board.
2. That the name of the counsel may kindly be printed in the cause list as counsel for the opp-parties No-6 U.P. & C.B.

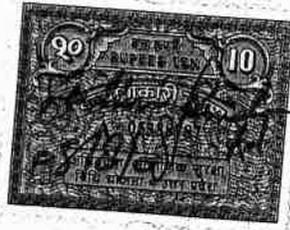
Prayer

Wherefore it is, most respectfully prayed that this Hon'ble Court may kindly be pleased to take on record the vakalatnama on behalf of the opp. No-6 U.P. & C.B. and to direct the registry to print the counsel's name in the cause list as counsel for the. opp-parties No-6. U.P. & C.B.

Lucknow
Dated: 25/8/2008

Sudhir Pandey
(Sudhir Pandey)
Advocate
Counsel for the

In the Hon'ble High Court of Judicature at Allahabad
SITTING AT LUCKNOW



BANWARI LAL — Petitioner

VERSUS

State of U.P. Jodhpur — opp. parties

W.P. No. 6748

(MIB) of 2008 (PIL)

I/we, the undersigned, do hereby nominate and appoint Sri SUDHIR PANDE, Advocate, 7, DALIBAGH, TILAK MARG, LUCKNOW, PIN CODE - 226001, Phone (0522) ~~203334~~ 2208101, Registration No. UP 1735/86 and

Shri Advocate, to be my/our counsel in the above matter and on my/our behalf to appear, plead, act and answer in the above Court or any Appellate Court or any Court to which the business is transferred in the above matter; and to sign and file petitions, statement(s) of accounts, exhibits, compromise or other documents whatsoever, in connection with the said matter arising therefrom; and also to apply for the issuance of summons and other writs or orders; and to apply for and get issued any arrest, attachment or other execution warrant or order and to conduct any proceedings that may arise therefrom; and to apply for and receive payment of any or all sums; or submit the above matter to Arbitration.

Provided, however, that if any part of the Advocate's fee remains unpaid before the first hearing of the case, or if any hearing of the case be fixed beyond the limits of the town, in such an event, my/our said Advocate(s) shall not be bound to appear before the court and if my/our said advocate(s) doth appear in the said case, he/they shall be entitled to an outstation fee and other expenses of travelling, lodging, etc.

Provided ALSO that if the case be dismissed in default, or if be proceeded ex-parte, the said advocate(s) shall not be held responsible for the same. And all, whatever my/our said advocate(s) shall lawfully do, I do hereby agree to, and shall in future, ratify and confirm the same.

ACCEPTED :

Sudhir Pandey
Adv.

Signature of Client

S. S. Chauhan

S. S. Chauhan, L.O. II

for U.P. Pollution Control Board
Lucknow

Counsel For opp. parties ^{No-6} (U.P.P.C.B)

05/8/08

4436 M/B

IN THE HON'BLE HIGH COURT OF JUDICATURE AT

ALLAHABAD, SITTING AT LUCKNOW ¹³³

COM 43571-204
Writ Petition no. 6748 (M/B) of 2008 (PIL).



Banwari Lal, aged about 40 years, S/O of Late Mitu Lal, R.../2008
Veer Khand, Gomti Nagar, Lucknow

.....Petitioner

VS

State of U.P. & others

.....Opposite party

APPLICATION FOR DISMISSAL OF WRIT PETITION

For the facts, circumstances and reasons stated in the accompanying short counter affidavit it is most respectfully requested that the Hon'ble Court may kindly be pleased to dismiss the writ petition being devoid of merits with exemplary cost in favour of answering opposite party no. 6.

Any other order as deemed fit and proper may also be passed in the instant case to meet the ends of justice.

Lucknow

Dated: 20/4/11

Sudhir Pandey
Advocate

Counsel of the Petitioner

CODE:

GROUP: MISC. BENCH ^{13A}

IN THE HON'BLE HIGH COURT OF JUDICATURE AT
ALLAHABAD, SITTING AT LUCKNOW.

Writ Petition no. 6748 (M/B) of 2008 (PIL).



Banwari Lal, aged about 40 years, S/O of Late Mittu Lal, R/o 2/393,

Vineet Khand, Gomti Nagar, Lucknow

.....Petitioner

VS

State of U.P. & others

.....Opposite parties

Short Counter Affidavit on behalf of Opposte Party No. 6

I, Swami Nath Ram aged about 50 years S/o Late Raj Bali Ram, Chief Environment Officer, Circle V, U.P. Pollution Control Board, Preet Bhawan, Vibhuti Khand, Gomti Nagar, Lucknow that the deponent do hereby solemnly affirm and state on oath as under:

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1. That the deponent is presently posted as Chief Environment Officer, Circle V, U.P. Pollution Control Board. As such he is well conversant with the facts of the case deposed to hereunder.

2. That the deponent has been authorized to file this short counter affidavit on behalf of opposite party no. 6.

3. That the deponent has read the writ petition and fully understand the contents thereof.

4. That the deponent may be granted the leave to file the present short counter affidavit and his right may be reserved to file the detailed counter affidavit as and when required. It is as such submitted that this Hon'ble Court may be pleased to permit the deponent to file the present short counter affidavit with the permission to file the detailed counter affidavit as and when required.

5. That the petitioner has filed the present writ petition for commanding the respondents 1-6 to provide proper places for municipal solid waste forthwith and comply with the provisions of Municipal Solid Waste (Management and Handling) Rules, 2000 with the help and assistance of the opposite party no. 7, being a practicing advocate of this Hon'ble Court. He claimed himself to be a public spirited person and filed many public interest litigation petitions.



6. That as such it is submitted that the petitioner has no *locus standi* to file the present writ petition before this Hon'ble Court, as he is not the person aggrieved but simply a stranger and busybody.

7. That the Hon'ble Supreme Court in the case of Janta Dal vs. H.S. Chaudhary & Others reported in (1992) 4 SCC 305 has put reliance on the view taken by Sarkaria, J in the case Jasbhai Moti Desai vs. Roshan Kumar reported in (1996) 1 SCC 671, which is quoted as under:-

Para-104 "It will be seen that in the context of *locus standi* to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories: (i) 'person aggrieved', (ii) 'stranger', (iii) 'busybody or meddlesome interloper'. Person in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things, which do not concern them they masquerade as crusaders for justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect. They indulge in the past time of meddling with the judicial process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be not more than spoking the wheels of administration. The High Court should do well to reject the applications of such busy bodies at the threshold."

Para-104 It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of P.W. will



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alone have a *locus standi* and can approach the court to wipe out the tears of poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the Court for vindicating any personal grievance deserves rejection at threshold."

8. That the Hon'ble Supreme Court in the case of *Chhetriya Pradushan Mukti Sangathan Samiti vs. State of U.P.* [reported in (1990)4 SCC 449] in paragraph 9, has been pleased to hold that the Hon'ble Supreme Court must protect the society from the so called protectors.

9. That in *S.P. Anand vs. H.D. Devegouda* reported in 1996 (6) SCC 734 (pr 18), Hon'ble Supreme Court has held that it is of utmost important that those who invoked the jurisdiction of this court seeking a waiver of the *locus standi* rule must exercise restraint in moving the court by not plunging in areas wherein they are not well versed.

10. That as such *locus standi* in public interest litigation will not be likely allowed to any one to litigate in the name of public interest to cause damage to others.

That in view of the facts and circumstances stated herein above the petitioner has no *locus standi* to file the instant writ petition.

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and it is not maintainable in the eye of law. The petitioner has no legal right for invoking the jurisdiction of the Hon'ble Court under Article 226 of the Constitution of India for commanding the respondents. More so the instant writ petition is liable to be dismissed to meet the ends of justice.

12. That the present writ petition has been styled as Public Interest Litigation, in the same, it is necessary to take note of the meaning of the expression "Public Interest Litigation". In Stroud's Judicial Dictionary, Vol. 4, 4th Edition, the "public interest" is defined as follows:

"Public Interest"- (1) A matter of public general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected".

In Black Law Dictionary, 6th Edition, "public interest" is defined as follows:-

"Public Interest". Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by



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the matters in question. Interest shared by citizens generally in affairs of local, State or local or National Government."

13. That in case of Nand Kishore Nautiyal vs. Tehri Hydro Development Corporation & others, reported in the (2000) 2 U P L B E C 1230, the Hon'ble Full Bench of this Hon'ble Court has been pleased to discuss the question of locus standi and in paragraph 13, it has been pleased to held as under:

"13. The question of locus standi implies that the petitioner should be pro bono publico acting bona fide and not for aggrandizement. A note of caution has been sounded by the Apex Court in S.P. Gupta's case (supra)"

"23. 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 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 sum of the dangers in public interest litigation, which the Court has to be careful to avoid."



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14. That the Hon'ble Supreme Court in the case of *Malik Brothers and others vs. Narendra Dadhich and others*, reported in (1999) 6 SCC 552 (paragraph 2) has held as under:

“a public interest litigation is usually entertained by a Court for the purpose of redressing public injury, enforcing public duty protecting social right at the vindicating public interest. The real purpose of entertaining such application is the vindication of the rule of law, effective access to justice to the economically weaker class and the meaningful realization of the fundamental rights. The directions and commands issues by the Court of law in the public interest litigation are for the betterment of the society at large and not for benefiting any individual. But if the Court finds that in the garb of the public interest litigation actually an individual's interest is sought to be carried out or protected. It would be the bounding duty of the Court not to entertain such petition as otherwise the very purpose of innovation of public interest litigation will be the frustrated. PIL is in fact a litigation in which a person is not aggrieved personally but brings an action on behalf of the down trodden mass for the redressal of their grievances.”

15. That the Hon'ble Supreme Court in the case of *Sanjay Musale vs. State of M.P. & others*, reported in (1998) 6 SCC 616 has been pleased to held that:

“The petitioner appears to have filed the litigation for the someone. There is no public interest involved in the petition.

The High Court rightly found to be a busybody and, in an

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opinion such a meddlesome interloper cannot be permitted to maintain a public interest litigation petition. The Courts cannot their form to be misused in the garb of "public interest". This special leave petition is therefore dismissed Rs. 5000/- as costs."

16. That the Hon'ble Supreme Court in the case of Vinoy Kumar vs. State of U.P. & others, reported in (2001) 4 SCC 734 has been pleased to held in paragraph 2 that:

"Generally speaking a person shall have no locus to file a writ petition if he is not personally affected by the impugned order or his fundamental rights have neither been directly or substantively invaded nor is there any imminent danger of such right being invaded or his acquired interest has been violated ignoring the applicable rules. The reliefs under Article 226 of the Constitution is based on existence of a right in favour of the person invoking jurisdiction. The exception of general rules is only in cases where the writ of habeas corpus or quo warranto or filed in public interest. It is a matter of prudence that the court confines the exercise of writ jurisdiction to cases where legal wrong or legal injuries are caused to the particular person or violated, and **not** to entertain cases of individual wrong or injury at the instance of third party where there is an effective aid organization which can take care of such cases. Even cases filed in public interest, the Court can exercise the writ jurisdiction at the instance of a third party only when it is shown that the legal wrong or injury or illegal burden is



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threatened and such persons or determined class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantage position unable to approach the Court for relief.”

17. That in the case of Ashok Kumar Pandey vs. State of W.B. [reported in (2004) 3 SCC 349] in paragraph 4, the Supreme Court has held that there must be real and genuine public interest involved in the litigation and not merely an adventure of knight-errand or poke one's nose into for a probe. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. The relevant paragraph 4 whereof is being quoted as under:

“4. When there is material to show that a petition styled as public interest litigation is nothing but a camouflage to foster personal disputes, the said petition is to be thrown out. Before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding public interest aspect. Public interest litigation which has now come to occupy an important filed in the administration of law should be ‘publicity interest litigation’ or ‘politics interest litigation’ or ‘the latest trend, prise income litigation’. If not properly regulated and abuse averted, it also becomes a tool in unscrupulous hands to release vendetta and wreak vengeance as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of a knight-

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errant or poke one's nose into for a probe. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. Person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive of any oblique consideration. These aspects were highlighted by this Court in Janata Dal case and Kazi Lhendup vs. Central Bureau of Investigation. A writ petitioner who comes not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective.

18. That Hon'ble Supreme Court in the case of Necty vs. State of Punjab (2007) 10 SCC 614 has held that under the guise of redressing a public grievance and public interest litigation should not approach upon the sphere reserved by the constitution to the executive and the legislature.

19. That in the case of Holicow Pictures (P) Ltd. vs. Prem Chandra Mishra reported in (2007) 14 SCC 281 Hon'ble Supreme Court had observed that the judges who exercise the jurisdiction

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should extremely careful to see that behind the beautiful veneer of public interest and ugly private malice and vested interest and/or publicity seeking is not lurking. The Court may insure that there is no abuse of process of the court.

20. That Hon'ble Supreme Court has held in the case of State of Uttaranchal vs Balwant Singh Chauhan and Others reported in (2010) 3 SCC 402 that a degree of precision and purity in presentation is a sine qua non for a petition filed by a member of the Bar under the label of public interest litigation. It is expected from a member of the Bar to at least carry out the basic research whether the point raised by him is res integra or not. The lawyer who files such a petition cannot plead ignorance. As in the present case 3 Writ Petitions namely W.P. 4436 (M/B)/2003 Sewage Treatment Plant vs State of UP, W.P. 6743 (M/B)/2008 Banwari Lal vs State of U.P. and W.P. 2598 (M/B) / 2007 Gomati Nagar Jan Kalyan Maha Samiti vs State of U.P. in the nature of Public Interest Litigation in the identical matter are pending before this Hon'ble Court and which are tied up to a bench comprising of Hon'ble Justice Pradeep Kant and Hon'ble Justice Abdul Mateen.

21. That in Sanjeev Bhatnagar vs. Union of India reported in (2005) 5 SCC 330, this Court went a step further by imposing a monetary penalty against an advocate for filing a devoid of public interest, and instead labeled it as "publicity interest litigation". Thus, the Court dismissed the petition with cost of Rs. 10,000/-.

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22. That similarly, in *Dattaraj Nathuji Thaware v. State of Maharashtra* reported in (2005) 1 SCC 590, the Supreme Court affirmed the High Court's monetary penalty against a member of the Bar for filing a frivolous and vexatious PIL petition. This Court found that the petition was nothing but a camouflage to foster personal dispute. Observing that no one should be permitted to bring disgrace to the (a) noble profession, the Court concluded that the imposition of the penalty of Rs. 25,000/- by the High Court was appropriate. Evidently, the Supreme Court has set clear precedent validating the imposition of monetary penalties against frivolous and vexatious PIL petitions, especially when filed by advocates.

23. That it is submitted that Village Seware at Mohan Road, Lucknow has been identified as the dumping site for the municipal solid wastes. It is submitted that public hearing for the aforesaid site was held as provided under Rule 5 (3) of the Environment (Protection) Rules 1986 and the State Level Environmental Appraisal Committee is seized with the matter and expected to give its approval shortly.

24. That as such the present Writ Petition is devoid of merits and liable to be dismissed with exemplary cost.

Place: Lucknow

Date:

16/4/11

Aruni Nath
Deponent

VERIFICATION

I, the deponent named above, do hereby verify that the contents of paragraphs 1 to 24 of this affidavit are true to my personal knowledge, those of paragraphs — are based on information derived from record and those of paragraphs — are based on legal advice. No part of it is false and no material fact has been concealed. So help me God.

Place: Lucknow

Date: 16/4/11

Swami Nath Ram
Deponent

I identify the deponent on the basis of the record produced by the deponent, who has signed before me.

प्रमोद कुमार - 2507-386/98
Clerk of the Sudhir Pandey, Advocate.

Solemnly affirmed before me on 16/4/11 at 9.25 am/pm by the deponent Swami Nath Ram, who has been identified by Mr. Pramod Kumar, Clerk to Shri Sudhir Pandey, Advocate, High Court, Lucknow.

I have satisfied myself by examining the deponent that he understands the contents of this affidavit which have been read out and explained to him by me.

16/4/11

Dhanraj Kumar Tripathi
OATH COMMISSIONER
HIGH COURT ALLAHABAD
LUCKNOW BENCH LUCKNOW

No. 340433 Date 16/4/11

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OATH COMMISSIONER