

## **DEMON IS BACK SEARCHING FOR PREY**

**[With inputs from Shri S Ratnasubramanian, Asst General Secretary, AIBSNLREA]**

As usual, one retired executives' welfare association with expertise in using every opportunity to dupe the unsuspecting pensioners, have started sending SMS to our members asking them to join their case in Principal Bench of CAT, following the Supreme Court order expressing disinclination in entertaining our Writ Petition under Article 32 of the constitution of India for getting pension/pay arrears, but granting us "leave and liberty" to approach the appropriate High Court.

It is a pity that petty politics have been in the play in the various pensioners associations of BSNL pensioners. We, on our part, try to avoid criticizing other associations in our website and only when their stand is hazardous and against the interests of the pensioners we write about their wrong stand on issues of importance. We discuss only the issues in their correct perspectives without mudslinging on anybody. But of late we find that a sinister propaganda is made and utter lies are spread by an association in their website in an attempt to create a confusion in our general membership and other well-wishers about the case filed by AIBSNLREA on representative capacity in Honorable Supreme Court on the pay and pension arrears issue. As such, much against our self-restraint that we have observed so long, we are now constrained to speak out at this stage. We would therefore like to straighten the facts on following two issues:-

### **Our Writ petition in Honorable Supreme Court**

Our members are aware that the effort to file the case directly in Supreme Court was made to reduce litigation time and based on precedents. Our members are also aware that the case was filed "on representative capacity to allow the benefit to one and all connected with the issue and it is immaterial whether one has signed the Vakalatnama or not for getting the benefit." Vakalatnamas were collected from some members from three different categories of pensioners spread over the entire country for some strategic reasons on the advice of the advocate and also as per existing legal practice. But the said association has started spreading canard of lies and mudslinging on us as it is their usual character. The said association has commented on our report on the issue that . . .

"The case came up for admission hearing today in court no 4. The case is not admitted and disposed off. We produce below an extract from supreme court site. It may be interesting to note that inspite of claiming to file the case on representative capacity, there are so many applicants perhaps only the leaders and their close associates.. It is known to all that the Judgements of such cases are coming in favour of applicants only. And here the leaders and associates have secured their position leaving behind the mass from whom they collected more than 10 lakhs of rupees.\*

When AIRBSNLEWA was preparing for the court case for pension arrears and was collecting signatures from individual pensioners, they have been bitterly criticised by one of the Pensioners Association. They claimed that there is no need for individual pensioners to sign the petition and they shall move to court as representative of all pensioners. They also named AIRBSNLEWA as cheat for collecting Rs 200/- as court fee and called upon the pensioners not to fall on their "pray".

Subsequently they started collecting Rs 500/ or more from the pensioners and collected more than 10 lakh rupees. There after they managed to file a writ petition in Supreme Court which has been disposed off yesterday. After that they posted following in their website.

*"The Writ Petition filed by AIBSNLREA in Supreme Court on pay and pension arrears issue came up for hearing for admission to-day in the bench of Justice Madan B Lokur and Justice Deepak Gupta. The Court felt that the Petitioner may move High Court first and accordingly has given liberty to the Petitioner to do so. The Association will take the Petition to Delhi High Court shortly"*  
As if the case was heard in the court and the Honble Supreme Court advised them to go to Delhi high court first and given them liberty to do so. Now Read below what is uploaded in Supreme court website.

Actual status of the case is simple "DISMISSED AS WITHDRAWN". No expression of any feeling or no liberty or nothing. Why to fool and cheat the the pensioners ?? Further the petitioner of the case is 439 other pensioners apart from the GS of the Association. If the case was to be filed on representative capacity why 439 other applicants? how are they selected? why the names of others who contributed not included in the case?"

**We understand the plight of the said Retired Executives Welfare Association in trying to project that the case was not heard at all in Supreme Court and our report about Supreme court granting us liberty to go to Delhi High Court is false. In its effort to confuse the affected pensioners it has also published an extract of the Supreme Court order, purposely leaving out the portion we have reported upon.**

**The said Association goes on to emphasize that "Actual status of the case is simple "DISMISSED AS WITHDRAWN". No expression of any feeling or no liberty or nothing". In order to expose the blatant lie being spread by the BSNL Retired Executive Welfare Association, we are publishing the Supreme Court order dated 5.2.2017 in our case.**

Let us go through the said Supreme Court Order dated 5/2/2018 reproduced below which was uploaded in the website of Supreme Court in the evening of the same day but after we reported the development in our website:-

ITEM NO.31

COURT NO.4

SECTION X

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Writ Petition(s)(Civil) No(s). 32/2018

ALL INDIA BHARAT SANCHAR NIGAM LIMITED  
RETIRED EXECUTIVES ASSOCIATION & ORS.

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(WITH IA No.7911/2018-APPLICATION U/O LV RULE 6 OF SCR 2013 FOR  
PERMISSION TO PETITIONER NO. 1 TO PROSECUTE THE W.P.)

Date : 05-02-2018 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MADAN B. LOKUR  
HON'BLE MR. JUSTICE DEEPAK GUPTA

For Petitioner(s) Mr. R. Venkataramani, Sr. Adv.  
Ms. C. K. Sucharita, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following  
O R D E R

We are not inclined to entertain the writ petition  
under Article 32 of the Constitution of India.

Learned counsel for the petitioner seeks leave to  
withdraw the writ petition and approach the appropriate  
High Court under Article 226 of the Constitution of  
India.

Leave and liberty granted.

The writ petition is dismissed as withdrawn.



(SANJAY KUMAR-I)  
AR-CUM-PS

(KAILASH CHANDER)  
COURT MASTER

**Does not the above Supreme Court order mention about ‘leave and liberty granted’ as prayed by our counsel? Moreover, does not the Order also starts with “Upon hearing the counsel ....” which confirms that we were duly heard in the Court. Then how they say that our case was not heard at all? While the whole Court Order is just of a few lines why they take only the last line of the Order as an extract and try to create confusion? Now who is cheating and trying to make fool of others?**

The said association has commented that the advice of the Court to move the high court first is not mentioned in the final order. Anyone who has a knowledge of the proceedings in a Court of Law would very well know that all the prayers submitted orally by the Counsels and the observations made by the Hon. Court does not get mentioned in the final order. Any person interested in legal issues could very well understand this if he just goes in detail in the famous politically sensitive and other such cases as reported in the media that all the observations made by the Court and reported in the media on day to day hearings do not find a place in the final order.

Now, two Articles of the Constitution of India are mentioned in the Supreme Court order. What are they? Article 32 of the constitution of India is the right to move the Supreme Court and Article 226 of India is Power of High Courts to issue certain writs.

Now it can be seen that Honorable Supreme Court is not inclined to entertain the case under Article 32 of the Constitution of India that is under right to move the Supreme Court. It can be further seen that the learned counsel of the petitioner seeks leave to withdraw the writ petition and approach the High Court under Article 226 i.e., on the power of High Courts to issue certain writs. And this “leave and liberty” has duly been granted by the Supreme Court.

It is a legal jurisprudence that one cannot file the same case simultaneously in two or more courts. It can be seen, a declaration that the case is not filed in any other Court by the petitioner would be in each and every affidavit including the affidavit filed by the said association in PCAT. Those who signed the said affidavit filed in PCAT may go through what they have signed to get the facts. As such when Honorable Supreme Court is not inclined to entertain the case under Article 32 of the Constitution, the other option left is to move High Court for which one has to necessarily withdraw the case in the Supreme Court. That is what has been done by our lawyer. Now the final wording of the order reads “Dismissed as withdrawn”. Those who try to carry a false propaganda at least should know the difference between “Dismissed as Withdrawn” and the order with final wordings “Dismissed” which would be given only after adjudication.

### **Filing the case in representative capacity**

Members of our associations as well as viewers of our website are aware that our association decided to file a case in the Honorable Courts for the arrears of pension for those who retired prior to 01-01-2007, for pay and pension arrears including the additional terminal benefits that were denied to those who retired from 01-01-2007 to 09-06-2013 and also for the pay arrears

for the period from 01-01-2007 to 09-06-2013 to those who retired after 10.6.2013. We have been actively explaining this issue in our website as well as in our circulars through email. We have also been appealing to our members/well-wishers to contribute at least Rs.500/- for the case. These have been done fully transparently. We are also uploading the contributions being received by us in our website and this is updated fortnightly. This is an open website that anyone can see the names of the contributors and the amount contributed by them. There is no hanky-panky in this.

We had also already stated that it is not necessary that all the members have to sign the Vakalatnama and the association represented by its General Secretary has filed the case in a representative capacity. And that irrespective of whether a person signs the Vakalatnama or not, once a favorable verdict is passed in the Hon. Courts this would apply to one and all. There is no secret in it that we decided that the Vakalatnama is to be signed not by each and every one but only by a few spread over the country and belonging to three different categories of pensioners. Our members who have contributed for the cause are informed on this and are fully aware of the same.

But the particular association holds the view that everyone has to sign the Vakalatnama in the case filed by them (obviously by paying the donations to them) and then only the judgment would be applied to them. We could very well understand their stand. If such a stand is not taken who would pay for the case filed by an association with a slender membership and with no brain? So their stand, though not legally correct, enabled them to raise money. Our association has a vast membership among the executives and has a pan-India character. So there was no need for us to take such a stand for collection of fund. Our membership is well informed and have full confidence in the wisdom and integrity of their leadership. That is why they contribute liberally. It appears that the overwhelming support that AIBSNLREA has been receiving from its members/well-wishers throughout India who are contributing liberally for a cause made the particular association feel jittery and jealous.

Now let us come to the issue of the legality of an association filing in representative capacity and the stand that the other Association has taken that everyone has to file Vakalatnama to get the benefit of the judgement.

In legal practice, an association alone cannot file a petition without showing a few of its members as applicants, always shown as "... & Ors". So at least a few individuals have to sign the Vakalatnama apart from the association filing in representative capacity. The "Others" in our case are spread over the length and breadth of the country and of different categories of those who retired (i) prior to 01-01-2007, (ii) from 01-01-2007 to 09-06-2013 and (iii) on or after 10-06-2013. They are not just "the leaders and their close associates" as propagated by the said Association. **A look at the list of Petitioners would show that a vast majority are just ordinary members.** However, we thank the said association for their comment that "[And here the leaders and associates have secured their position](#)" implying thereby that our case is strong and we are bound to win.

They have also opined that only the applicants would get the benefit. They conveniently forget that this case is not of a transfer or posting or seniority or promotion or pay-fixation or stepping-up of pay that involves a few individuals- wherein the judgement would apply only for the affected applicants. On the other hand, we have umpteen number of judgements where a common cause is involved and the judgements of the cases are implemented for one and all. In fact in various judgements, the Honorable Supreme Court had observed “once an issue is accepted in principle it should be extended to all and not only to the applicants “

To cite one case, Hon’ble Supreme Court of India in C.A. Nos. 8334-8353 /2001, 8355-8357 and 8358-8374/2001, State Of Karnataka And Ors. vs N. Parameshwarappa And Ors. on 9 October, 2002, in paragraphs 8 and 9 has held as under: ". ...we do not find any reasonable justification to confine the relief to only such of the teachers who approached the court and having regard to the fact that relief related to the revision of scales of pay, every one of that class of teachers who approached would be entitled to the benefit, notwithstanding that they have not approached the Court.” [Link: <https://indiankanoon.org/doc/408620/>]

**In another case, Supreme Court of India in CA 441/2001, E.S.P.Rajaram & Ors vs Union Of India & Ors on 10 January, 2001 had observed “** In the case on hand the controversy relates to the scale of pay admissible for Traffic Apprentices in the Railways appointed prior to the cut-off date. The controversy in its very nature is one which applies to all such employees of the Railways; it is not a controversy which is confined to some individual employees or a section of the employees. If the judgment of the tribunal which had taken a view contrary to the ratio laid down by judgment of this Court in M. Bhaskar's case (supra) was allowed to stand then the resultant position would have been that some Traffic Apprentices who were parties in those cases would have gained an unfair and undeserved advantage over other employees who are or were holding the same post.” [Link: <https://indiankanoon.org/doc/581738/>]

May be another reason for the particular association to spit venom is that its grounds for relief in their Application in PCAT Delhi have been built on a very shocking admission by it, which is likely to spoil the case not only for them but for all the BSNL pensioners as a whole. We shall write a separate article on it later to expose their sinister design.

=====09-02-2018=====