

Gujarat High Court

Citizens Resource & Action ... vs Appearance: on 10 July, 2013

CITIZENS RESOURCE & ACTION INITIATIVE CRANTI....Applicant(s)V/SSTATE OF GUJARAT

C/WPPIL/133/2013

CAV JUDGEMNT

IN

THE HIGH COURT OF GUJARAT AT AHMEDABAD

WRIT PETITION (PIL)
NO. 133 of 2013

FOR
APPROVAL AND SIGNATURE :

HONOURABLE
THE CHIEF JUSTICE MR. BHASKAR BHATTACHARYA

and

HONOURABLE
MR. JUSTICE J . B . PARDIWALA

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Whether Reporters of Local Papers may be allowed to see the judgment ?

To be referred to the Reporter or not ?

Whether their Lordships wish to see the fair copy of the judgment ?

Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

Whether it is to be circulated to the civil judge ?

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CITIZENS RESOURCE & ACTION INITIATIVE CRANTI....Applicant(s) Versus STATE OF GUJARAT &

4 O p p o n e n t (s)
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Appearance:

MS SONA SAGAR, ADVOCATE for the Applicant(s) No. 1 MR.P.K.

JANI, GOVERNMENT PLEADER with MS. VACHA DESAI, AGP on advance copy.

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CORAM:

HONOURABLE THE CHIEF JUSTICE MR. BHASKAR BHATTACHARYA and HONOURABLE MR.JUSTICE J.B.PARDIWALA Date :10/07/2013 CAV JUDGEMENT (PER : HONOURABLE MR.JUSTICE J.B.PARDIWALA) This writ-application in the nature of a public interest litigation has been filed by an organization claiming to be engaged in creating awareness amongst the people regarding their fundamental rights and duties, helping the people to inform through Right to Information Act, creating awareness and accountability in the Government, to make the benefits and services reach the common man, creating an able and strong citizen who can form a lively and responsive democracy, and has prayed for the following reliefs:-

A. Direct that financial compensation of Rs. 5 lac be paid by Government to the family of the deceased farmers who have committed suicide due to crop failure in the State;

B. Direct that financial aid to farmers at the rate of Rs. 30,000 per hectare be paid to the farmers who have suffered crop failure;

C. Direct that the loans obtained by the farmers from the banks and financial institutions for agricultural purposes be waived and further loans be given;

D. Direct that prompt payment of crop failure insurance be ensured by the Government;

- E. Direct that interest on loans obtained by the farmers from Co-operative Societies be waived;
- F. Direct that the principal amount of loan obtained by the farmers from the Co-operative Societies be waived;
- G. Direct that water conservation and management policy be laid and implemented by the Government;
- H. Direct that the Government to offer and implement some financial package/policy for the farmers who are facing crop failure;
- I. Direct the Government to follow the guidelines of National Disaster Management;
- J. Direct the Government to provide employment to the families of drought affected farmers who have committed suicide.

2. The case made out by the petitioner in this petition may be summarized as under:-

2.1 According to the petitioner, the Government of Gujarat has been trying hard to project itself as a State that is much ahead of others in the development and industrialization. Agriculture is the main source of income so far as the State of Gujarat is concerned. According to the petitioner, the large number of suicides committed by the farmers in the State indicate that the development in the State is not of the level as it has been tried to be projected. The State is ravaged by the drought and the region of Saurashtra is on the brink of a massive agrarian crisis. It is the case of the petitioner that due to scant rainfall, the level of financial debt on the heads of the farmers has grown so high that many of them committed suicide. According to the petitioner, around forty farmers died between August and December, 2012 as reflected from the Police reports. The incidence of suicides by the farmers in Gujarat have been reported in the newspapers and also in various magazines. It is also the case of the petitioner that the Government of Gujarat has shown complete neglect towards the farmers of the State in spite of claiming to be a promoter of green revolution. The farmers of the State are facing acute financial distress due to which they are left with no other option but to put an end to their lives.

2.2 According to the petitioner, in such circumstances, this Court should interfere and grant the reliefs as prayed for in the petition.

3. Ms.

Sona Sagar, the learned Advocate appearing for the petitioner vehemently submitted that the State Government has completely failed in protecting the fundamental rights of its citizen. She submitted that the Government has exhibited scant respect for a human life. Despite being aware that many farmers have committed suicide due to the financial debt, the Government has not taken care to solve the problems, which the farmers are facing due to failure of crop etc. In such circumstances, Ms. Sagar prays that we should interfere and issue necessary directions to the executive to take

prompt action in the matter.

4. Although we did not issue notice to the respondents as we were prima facie not convinced with the case set up by the petitioner, however, since an advance copy of the petition was served, Mr. P.K. Jani, the learned Government Pleader appeared for the State and assisted the Court.

5. The first thing we have noticed so far as the present petition is concerned, is that the pleadings are extremely poor. It is a settled proposition of law that a party has to plead its case and produce/adduce sufficient evidence to substantiate the averments made in the petition, and in case the pleadings are not complete, the Court is under no obligation to entertain the pleas. It cannot be said that the Rules of procedural law do not apply in a public interest litigation. We are conscious of the settled law that strict rules of pleading may not apply in a PIL, however, there must be sufficient material in the petition on the basis of which the Court may proceed. The PIL litigant has to lay a factual foundation for his averments on the basis of which such a person claims the reliefs. The information furnished by him should not be vague and indefinite. It is also a settled law that proper pleadings are necessary to meet the requirements of the principles of natural justice and the litigant cannot approach the court to have a fishing or roving enquiry. [See State of Madhya Pradesh Vs. Narmada Bachao Andolan, reported in (2011) 7 SCC 639].

6. We have also noticed that the entire petition is based on newspaper reports. There is no statement in the petition whether the petitioner who has affirmed this petition had personally verified the genuineness of the contents of the newspaper reports from the concerned media reporters as required under the Public Interest Rules framed by the High Court.

7. Be that as it may, the question that arises for our consideration is whether we should entertain such a petition and whether it is possible or permissible in law to grant any effective or complete relief.

Ordinarily, court would allow litigation in public interest if it is found :

(i) That the impugned action is violative of any of the rights enshrined in Part III of the Constitution of India or any other legal right, and relief is sought for its enforcement;

(ii) That the action complained of is palpably illegal or malafide and affects the group of persons who are not in a position to protect their own interest on account of poverty, incapacity or ignorance;

(iii) That the person or a group of persons were approaching the Court in public interest for redressal of public injury arising from the breach of public duty or from violation of some provision of the Constitutional law;

(iv) That such person or group of persons is not a busy body of meddlesome inter-loper and have not approached with mala fide intention of vindicating their personal vengeance or grievance;

(v) That the process of public interest litigation was not being abused by politicians or other busy bodies for political or unrelated objective. Every default on the part of the State or Public Authority being not justiciable in such litigation;

(vi) That the litigation initiated in public interest was such that if not remedied or prevented would weaken the faith of the common man in the institution of the judiciary and the democratic set up of the country;

(vii) That the State action was being tried to be covered under the carpet and intended to be thrown out on technicalities;

(viii) Public interest litigation may be initiated either upon a petition filed or on the basis of a letter or other information received but upon satisfaction that the information laid before the Court was of such a nature which required examination;

(ix) That the person approaching the Court has come with clean hands, clean heart and clean objectives;

That before taking any action in public interest the Court must be satisfied that its forum was not being misused by any unscrupulous litigant, politicians, busy body or persons or groups with mala fide objective of either for vindication of their personal grievance or by resorting to black-mailing or considerations extraneous to public interest.

8. It is also the duty of the Court to ensure that the petitioner has not been setup by others and is nothing but a 'name lender'. In the well-known pronouncement of the Supreme Court in the case of the Janata Dal v/s. H.S.Chowdhary and others, reported in AIR 1993 SC 892, the Supreme Court in detail has explained Public Interest Litigation its origin and meaning. In paragraphs 48, 49, 50 and 51, it has been observed as under :-

48. The question, "what 'PIL' means and is?" has been deeply surveyed, explored and explained not only by various judicial pronouncements in many countries, but also by eminent Judges, jurists, activist lawyers, outstanding scholars, journalists and social scientists etc. with a vast erudition. Basically the meaning of the words 'Public Interest' is defined in the Oxford English Dictionary, 2nd Edition, Vol. XII as "the common well beingalso public welfare".

49. In Shrouds Judicial Dictionary, Vol. 4 (IV Edition), 'public interest' is defined thus: "PUBLIC INTEREST (1) A matter of public or 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".

[per Cambell C.J., R. v. Bedfordshire, (1855) 24 LJQB 81 (84)].

50. In Black's Law Dictionary (Sixth 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 the matters in question. Interest shared by citizens generally in affairs of local, State or national government"

51. The expression 'litigation' means a legal action including all proceedings therein, initiated in a Court of Law with the purpose of enforcing a right or seeking a remedy. Therefore, lexically the expression 'PIL' means a legal action initiated in a Court of Law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected. There is a host of decisions explaining the expression 'PIL' in its wider connotation in the present day context in modern society, a few of which we will refer to in the appropriate part of this judgment.

9. Applying the aforesaid tests to the facts of the present case, this Court owes a duty to see as to whose cause the petitioner is promoting when a petition is filed to pursue a Public Interest Litigation? Whose fundamental or other rights, if any, have been infringed? Who is to be relieved against any wrong and injury caused to him for which he cannot come to this Court? These are some of the vital questions which are to be answered to test maintainability of any petition which purports to be in 'Public Interest' and for a 'Public Cause'.

10. Having regard to the issue raised in this petition, the observations of Pathak, J. in the case of S.P. Gupta Vs. The President of India and ors.

reported in AIR 1982 SC 149, where the Supreme Court and the High Court may entertain public interest litigation, are very pertinent to notice. The observations are:

"40.

..... Not infrequently public interest litigation affects the rights of persons not before the Court, and in shaping the relief the Court must invariably take into account its impact on those interests. Moreover, when its jurisdiction is invoked on behalf of a group, it is as well to remember that differences may exist in content and emphasis between the claims of different sections of the group. For all these reasons the Court must exercise the greatest caution and adopt procedures ensuring sufficient notice to all interests likely to be affected. Moreover the nature of the litigation sometimes involves the continued intervention of the Court over a period of time, and the organising of the litigation to a satisfactory conclusion calls for judicial statesmanship, a close understanding of constitutional and legal values in the context of contemporary social forces, and a judicious mix of restraint and activism determined by the dictates of existing reality. Importantly, at the same time, the Court must never forget that its jurisdiction extends no farther than the legitimate limits of its constitutional powers and avoid trespassing into Political Territory which under the Constitution has been appropriated to other organs of the State. This last aspect of the matter calls for more detailed consideration, which will be attempted later."

"Turning now to the nature and extent of the relief which can be contemplated in public interest litigation, we enter into an area at once delicate and sensitive and fraught with grave implications. Article 32 confers widest amplitude of power on this Court in the matter of granting relief. It has power to issue "directions or orders or writs", and there is no specific indication, no express language, limiting, or circumscribing that power. Yet, the power is limited by its very nature, that it is judicial power. It is power which pertains to the judicial organ of the State, identified by the very nature of the judicial institution. There are certain fundamental constitutional concepts which, although elementary, need to be recalled at times. The Constitution envisages a broad division of the power of the State between the legislature, the executive and the judiciary. Although the division is not precisely demarcated, there is general acknowledgment of its limits. The limits can be gathered from the written text of the Constitution, from conventions and constitutional practice, and from an entire array of judicial decisions. The constitutional lawyer concedes a certain measure of overlapping in functional action among the three organs of the State. But there is no warrant for assuming a geometrical congruence. It is commonplace that while the Legislature enacts the law, the executive implements it and the Court interprets it and, in doing so, adjudicates on the validity of executive action and, under our Constitution, even judges the validity of the legislation itself. And yet it is well recognised that in a certain sphere the Legislature is possessed of Judicial power, the executive possesses a measure of both legislative and judicial functions, and the Court, in its duty of interpreting the law, accomplishes in its perfected action a marginal degree of legislative exercise. Nonetheless, a fine and delicate balance is envisaged under our Constitution between these primary institutions of the State. In similar constitutions elsewhere the courts have been anxious to maintain and preserve that balance. An example is provided by *Marbury v. Madison* (5 US 137). I do not mean to say that the Court should hesitate or falter or withdraw from the exercise of its jurisdiction. On the contrary, it must plainly do its duty under the Constitution. But I do say that in every case the Court should determine the true limits of its jurisdiction and having done so, it should take care to remain within the restraints of its jurisdiction."

"Where the Court embarks upon affirmative action in attempt to remedy a constitutional imbalance within the social order, few critics will find fault with it so long as it confines itself to the scope of its legitimate authority. But there is always the possibility, in public interest litigation, of succumbing to the temptation of crossing into territory which properly pertains to the Legislature or to the executive Government. For in most cases the jurisdiction of the Court is invoked when a default occurs in executive administration, and sometimes where a void in community life remains unfilled by legislative action. The resulting public grievance finds expression through social action groups, which consider the Court an appropriate forum for removing the deficiencies. Indeed, the citizen seems to find it more convenient to apply to the Court for the vindication of constitutional rights than appeal to the executive or legislative organs of the State. In the process of correcting executive error or removing legislative omission the Court can so easily find itself involved in policy making of a quality and to a degree characteristic of political authority, and indeed run the risk of being mistaken for one. An excessively political role indistinguishable with political governance betrays the Court into functions alien to its fundamental character and tends to destroy the delicate balance envisaged in our constitutional system between its three basic institutions. The Judge, conceived in the true classical mould, is an impartial arbiter, beyond and above political bias and prejudice, functioning silently in accordance with the Constitution and his judicial conscience. Thus does he

maintain the legitimacy of the institution he serves and honour the trust which his office has reposed in him."(emphasis added)

11. Thus, these are broad outlines of guidance and limitation. Any excessive role for any cause may break the delicate balance. The Court should not have an attitude that they alone are protectors of fundamental rights of citizens and a democratically elected government have no such feeling or inclination. Initial attitude of courts vis-a-vis executive organ of a state should not be of suspicion in this behalf. Of course, if the Court after inquiring and due scrutiny finds that the State is not performing its duty, the Court can and should step in to protect and enforce fundamental rights to the extent it can give relief. The attitude ought to be of trust and not always of confrontation. The people elect their representatives in a democratic form of government. It is the duty of those elected representatives to safeguard the interest of the citizens they represent and satisfy the democratic values of the people they represent. It is primarily the duty of the Executive part of the State to safeguard the rights whether fundamental or otherwise of their citizens. It is only when Executive fails in protecting this right that a citizen can approach for enforcement of his fundamental rights through courts. But, basically the duty remains of the Executive to see to it that the fundamental rights of the citizens are not infringed. But the condition which must be fulfilled before public interest litigation is entertained by superior court is that the Courts should be in a position to give effective and complete relief. If no effective or complete relief can be granted, the court should not entertain public interest litigation.

12. We may only say that if any citizen of this State feels that a particular Government has not been able to fulfill its promises as made at the time of election through its political manifesto or has not been able to meet with the expectations of the people, then in that case, it is for the people to correct the defects by exercising their franchise properly in the next elections and voting for candidates who will fulfill their expectations or by other lawful means in a peaceful manner to arouse the conscience of the Government, but the remedy is surely not by approaching the judiciary and asking it to scrutinize the functions of the other organs. If this Court would take upon itself the task of issuing directions as to how the State Government should administer the State, then such an approach, as held by the Supreme Court, would not only disturb the delicate balance of powers between the three wings of the State but, would also strike at the very basis of our democratic polity which postulates that the governance of the State should be carried on by the Executive enjoying the confidence of the Legislature which is answerable and accountable to the people at the time of elections.

13. We have gone through the materials on record. We have noticed that in most of the cases, the cause assigned for the death was consumption of poison for certain unknown reasons. In some of the cases, the cause assigned has been matrimonial problems or illness like cancer. We do not say for a moment that commission of suicide by a farmer as a result of failure of crop and financial debt is something which should be ignored. We are conscious of the fact that even if one such suicide is reported, it is something very serious but at the same time, it is for the State Government to look into the matter. This Court should not issue directions which would be in the nature of a policy. What should be the policy of the State Government to meet with such a contingency, is best left for the executive to decide. Mr. Jani, the learned Government Pleader, who appeared on the advance copy of the petition being served by the petitioner, submitted that the State Government is fully

conscious of the rights of the farmers and is taking all necessary steps to protect the interest of the farmers. Mr. Jani has drawn our attention to the National Agricultural Insurance Scheme (NAIS). Mr. Jani has also drawn our attention to a Government Resolution dated 7th May, 2012, issued by the Agriculture and Co-operation Department, laying down guidelines and operational modalities fixed by the Government of India, which have been accepted by the State Government for its implementation. Mr. Jani has also submitted that vide Resolution dated 7th May, 2012, the Director of Agriculture, State Level Bankers Committee, Lead Banks, District Central Co-operative Banks and Agriculture Insurance Company of India have been directed to take necessary action to ensure the effective implementation of the scheme according to the guidelines of NAIS and the Resolution. The Director of Agriculture, Gujarat State, Gandhinagar and the Agriculture Insurance Company of India Limited, Ahmedabad have also been directed to make necessary arrangements for the wide publicity of the scheme and also to ensure to conduct the requisite numbers of Crop Cutting Experiments i.e. CCES. All the concerned nodal banks have been directed to submit the summary details of the farmers participated and benefited in the scheme, under SC/ST and other category to AIC with details including number of farmers, area insured, sum insured, premium paid, premium subsidy, consolidated summary in the declaration format, separately, at the end of the season. The Resolution also provides that the financial institutions would advance additional loan to loanee farmers to meet with requirement of premium amount as applicable upto the extent of crop loan.

Thus, from the above, it appears that the Government is alive to this situation.

14. However, as discussed above, we refrain from exercising our powers under Article 226 of the Constitution of India for issuing directions as prayed for in this petition. They are all policy matters and what policy will suit best in the interest of the farmers, has to be decided by the Government.

15. In such circumstances, we do not find any merit in this writ-application, and the same is rejected with no order as to costs.

(BHASKAR BHATTACHARYA, C.J.) (J.B.PARDIWALA, J.) Mohandas Page of 15