

CASE NO.:
Writ Petition (civil) 580 of 2003

PETITIONER:
Common Cause (A Regd. Society)

RESPONDENT:
Union of India & Ors

DATE OF JUDGMENT: 11/04/2008

BENCH:
H.K. SEMA

JUDGMENT:
J U D G M E N T
REPORTABLE

WRIT PETITION (CIVIL) NO.580 OF 2003
(Under Article 32 of the Constitution of India)

H.K. SEMA, J

1. This petition has been filed in the form of public interest litigation by Common Cause (A Registered Society) through its Director Shri H.D. Shourie r/o A-31, West End, New Delhi.

2. At the risk of Writ Petition, the petitioner sought for the following reliefs:

(i) to issue a Writ, direction or order in the nature of mandamus and/or any other writ, direction or order directing the Respondent No.1, in consultation with representatives of the Respondent Nos.2, 3, 4, 5 & 6 and also representatives of other States/UTs :-

(a) to set up fully satisfactory procedures of licensing of vehicles and licensing of drivers, for ensuring that the vehicles are fully equipped with all the safety travel requirements, and also ensure that drivers of private vehicles as well as drivers of public vehicles including buses and trucks, are fully trained and are competent to drive the respective types of vehicles, and to also organize high-level training arrangements for the drivers of respective types of vehicles; appropriate procedures should also be ensured for suspension/cancellation of driving licences in the event of any default or for involvement in any accident;

(b) to ensure provision of all infrastructural requirements of roads, including signs, signals, footpaths, repairs of roads, and all such other requirements which will help to minimise risks of accidents on the roads;

(c) to set up methodology and requirements for undertaking scientific analysis of every accident, for ensuring that similar causes do not recur which can lead to accidents, thereby minimizing the possibilities of accidents;

- (d) to establish suitable organizations for providing education to all types of users of roads, through experts as well as use of suitably devised visual and audio media;
- (e) to ensure the availability of ambulances for immediate removal of injured persons to hospitals;
- (f) to set up Committees of Experts in each State/UT and in the bigger cities for dealing with these various requirements for minimization of accidents on the roads;
- (ii) to direct Respondent No.1 to formulate a suitable Road Traffic Safety Act to meet effectively the various requirements for minimization of road accidents; and
- (iii) to pass such other and further orders as may be deemed necessary to deal effectively with the various matters relating to traffic Safety on the roads and minimization of road accidents, on the facts and in the circumstances of the case.

3. I had the privilege of going through the erudite judgment prepared by my learned Brother Justice Katju and I respectfully agree with the conclusion reached by my brother Katju that the Writ Petition be dismissed. While coming to this conclusion Brother Katju was of the opinion that the Motor Vehicles Act is a comprehensive enactment on the subject. He was further of the opinion that if there is lacuna or defect in the Act it is for the legislature to correct it by a suitable amendment and not by the Court. I am also of the view that the relief sought for in this Writ Petition is adequately taken care of by the Motor Vehicles Act itself and if there is any lacuna or defect, it is the legislature to correct it by amending the Act and not the Court.

4. I however, respectfully dissociating myself from certain general observations of my learned Brother in paragraphs 36, 37, 38, 39, 43, 44, 45, 46, 47, 48, 49, 50, 52, 53 and 55 in the judgment, expressing doubts about the jurisdiction of this Court entertaining the petition in the form of public interest litigation.

5. I also respectfully disagree with certain observations made by a two-Judge Bench of this Court in the case of Divisional Manager, Aravali Golf Course & Anr. vs. Chander Hass, JT 2008(3) SC 221, as referred to by my learned Brother in Para 8 of his Judgment.

6. In the case of Union of India vs. Association for Democratic Reforms and Another (2002) 5 SCC 294, raised the substantial question of law of public importance was whether in a nation constitutionally wedded to republican and democratic form of Government, where election as a Member of Parliament or as a Member of Legislative Assembly is of utmost importance for democratic form of the country, before casting votes, voters have a right to know relevant particulars of their candidates; and whether the High Court had jurisdiction to issue directions in a Writ Petition filed under Article 226 of the Constitution of India? The High Court of Delhi entertained the writ petition and directed the Election Commission to secure to voters the following information pertaining to each of the candidates contesting election to

Parliament and to the State Legislatures and the parties they represent :

1. Whether the candidate is accused of any offence(s) punishable with imprisonment. If so, the details thereof.

2. Assets possessed by a candidate, his or her spouse and dependent relations.

3. Facts giving insight into the candidate's competence, capacity and suitability for acting as a parliamentarian or a legislator including details of his/her educational qualifications.

4. Information which the Election Commission considers necessary for judging the capacity and capability of the political party fielding the candidate for election to Parliament or the State Legislature.

7. Aggrieved by the aforesaid direction of the High Court, an appeal was filed before the Supreme Court by the Union of India. A three Judge Bench of this Court, of which one of us was a party (Sema J.), in Union of India vs. Association for Democratic Reforms and Another (supra) upheld the direction, repelling the arguments of the appellant, this Court held :

"The Supreme Court cannot give any directions for amending the Act or the statutory Rules. It is for Parliament to amend the Act and the Rules. It is also established law that no direction can be given, which would be contrary to the Act and the Rules. However, it is equally settled that in case when the Act or Rules are silent on a particular subject and the authority implementing the same has constitutional or statutory power to implement it, the Court can necessarily issue directions or orders on the said subject to fill the vacuum or void till a suitable law is enacted."

(emphasis supplied)

8. Further, in paragraph 46 (6) of the judgment it is held :

"46(6). On cumulative reading of a plethora of decisions of this Court as referred to, it is clear that if the field meant for legislature and executive is left unoccupied detrimental to the public interest, this Court would have ample jurisdiction under Article 32 read with Articles 141 and 142 of the Constitution to issue necessary directions to the executive to subserve public interest."

(emphasis supplied)

9. Therefore, whether to entertain the petition in the form of Public Interest Litigation either represented by public-spirited person; or private interest litigation in the guise of public interest litigation; or publicity interest litigation; or political interest litigation is to be examined in the facts and circumstances recited in the petition itself. I am also of the view that if there is a buffer zone unoccupied by the legislature or executive which is detrimental to the public interest, judiciary must occupy the field to subserve public interest.

Therefore, each case has to be examined on its own facts.

10. In my considered opinion therefore, the blanket bar of the application in the form of PIL is obviated. Subject to aforesaid, I agree with the conclusion of my learned Brother that the petition be dismissed.

JUDIS