

CASE NO.:
Writ Petition (civil) 69 of 2006

PETITIONER:
NATIONAL COUNCIL FOR CIVIL LIBERTIES

RESPONDENT:
UNION OF INDIA & ORS

DATE OF JUDGMENT: 10/07/2007

BENCH:
C.K. Thakker & Altamas Kabir

JUDGMENT:
J U D G M E N T

ALTAMAS KABIR, J.

This writ petition has been filed by the National Council for Civil Liberties through its President, Shri V.K. Saxena, against the Union of India, State of Gujarat, State of Madhya Pradesh, Smt. Medha Patkar, Narmada Bachao Andolan, Shri Rahul Banerjee and the Director of the Central Bureau of Investigation, inter alia, for enforcement of the petitioner's fundamental rights under Articles 14 and 21 of the Constitution perpetually on account of arbitrary inaction of the respondents and for protection of a better right to live of the inhabitants of Gujarat, Madhya Pradesh and Rajasthan. On the basis of the allegations made in the writ petition, the writ petitioner has prayed for the following reliefs:

(a) "Issue appropriate writ order of direction directing the respondent Nos. 1,2,3 and 7 to investigate into the routing of foreign funds into the activities of the respondent Nos. 4, 5 and 6 of its subordinate and supportive organizations that have been referred to in this petition and that may be revealed during the course of such investigation and its utilization for purposes that are found to be seditious in nature and for purposes that are against national interest and are directed against smooth implementation of projects of national importance and to report to this Hon'ble Court within such time as this Hon'ble Court may deem fit to prescribe;

(b) Issue appropriate writ order or direction directing the respondent Nos. 2 and 3 to place before this Hon'ble Court the status report on pending prosecutions lodged against the respondent Nos. 4, 5 and 6 and their activists along with that of the support groups and organizations as enumerated in this petition, and this Hon'ble Court be pleased to issue such appropriate directions upon receipt of such status report to ensure expeditious disposal of pending investigation and/or trials within such time period as may be

found fit and appropriate by this Hon'ble Court;

(c) Issue appropriate writ order or direction directing respondent No.3 to place before this Hon'ble Court a specific action taken report in view of the vigilance report/ Devas police report after the Mehendikheda firing incident in the State of M.P. and to issue appropriate directions on receipt of such status report further directing such investigation to be conducted by the respondent No.7;

(d) Issue appropriate writ order or direction directing respondent No. 7 to undertake detailed investigation into the affairs of the respondent Nos. 4,5, 6 and their support groups as enumerated in this petition and more particularly in respect of the activities in the nature of source, supply and acquisition of arms, explosives, detonators, gelatin sticks, bullets and connections with naxal organizations as well as supply and free usage of arms and explosives more particularly with a view to thwart the progress of projects of national importance by terrorizing government officials and locals, facts of which have come to be revealed in the final report submitted by SDO Bagli M.P. to Additional Sessions Judge, Bagli District: Devas;

(e) Issue appropriate writ order or direction directing the Central and State Government to evolve a proper mechanism for implementation a project of national importance where project developer be directed to provide all available information to the people of that particular area regarding cost of project, time schedule for implementation, why the project is being implemented, its likely impact on citizens (positive or negative), how the Govt. plans to compensate the citizens, who are likely to be displaced or adversely affected and benefits after the implementation etc. to curb the misinformation spread by vested interest. Such information should be freely and easily available to all.

(f) Any other direction which this Hon'ble Court may deem fit."

2. The prayers indicate that the writ petitioner is basically concerned with the alleged acquisition and supply of arms, explosives, detonators, gelatin sticks and bullets by the respondent Nos. 4, 5 and 6 and their support groups naxalite organizations. Further allegations have been made with regard to supply and free usage of arms and explosives with a view to obstructing the

progress of projects of national importance.

3. On 7th July, 2006, when the Writ Petition was moved, this Court did not consider it necessary to issue notice to the respondent No.4-Smt. Medha Patkar and respondent No.7-Director, Central Bureau of Investigation. Presumably the Court was not entirely convinced of the allegations against Smt. Medha Patkar and hence no notice was issued to her. Consequently, at the time of final hearing of the writ petition, no one appeared on her behalf or on behalf of the CBI while the respondent No.6 \026Rahul Banerjee, appeared in person.

4. When the matter was taken up for final hearing on 10th May, 2007, Ms. Indira Jaising, learned senior advocate, appearing for the respondent No.5, raised a preliminary objection that the writ petition was not maintainable, particularly in the shape of a Public Interest Litigation, since no fundamental right of the petitioner-organization had been infringed from the facts as disclosed in the writ petition and the writ petitioner had filed the writ petition out of sheer grudge against the respondent Nos. 4, 5 and 6. She pointed out that apart from Shri Saxena, the President of the National Council for Civil Liberties, nobody else had been impleaded as petitioner to lend support to the case made out in the writ petition. Ms. Indira Jaising urged that the petitioner had no locus-standi to maintain the petition.

5. A similar stand was taken on behalf of the Union of India.

6. After taking note of such objection, we decided to hear the parties both on the question of maintainability of the writ petition and also on merits.

7. Mr. Amar Dave, learned advocate, appearing in support of the writ petition, urged that Shri Saxena had no personal axe to grind against the respondent Nos. 5 or 6 but he was actuated by national interest to file the writ petition to prevent the respondent Nos. 5 and 6 from obstructing the construction of the Sardar Sarovar Dam over the Narmada River. Mr. Dave urged that the lives of thousands of people, not only in Gujarat, but also in Madhya Pradesh and Rajasthan, had been adversely affected by the activities of the respondent Nos. 5 and 6 aimed at preventing the construction of the Dam. It was urged that such action on the part of the respondent Nos. 5 and 6 and the inaction of the respondent Nos. 1, 2 and 3 in containing such obstructive acts adversely affected the people of Gujarat, Rajasthan and Madhya Pradesh, and amounted to violation of their fundamental rights under Articles 14 and 21 of the Constitution, thereby giving rise to a cause of action for filing the writ petition under Article 32 of the Constitution.

8. As far as locus standi was concerned, Mr. Dave pointed out that the Bombay High Court and subsequently this Court had in the case of Olga Tellis and Ors. vs. Bombay Municipal Corporation and Ors., (reported in (1985) 3 SCC 545), entertained writ petitions filed by a journalist and two pavement dwellers for enforcing the fundamental rights of pavement and slum dwellers under Articles 21, 37, 39 (a) and 41 of the Constitution against their forcible eviction and the removal of their hutments under the Bombay Municipal Corporation Act, 1888. Mr. Dave pointed out that this Court made it clear that writ petitions filed by Olga Tellis and two others were maintainable since the right to life guaranteed under Article 21 includes the right to livelihood from which they would be deprived if the slum

dwellers were evicted from their slums and pavement dwellings, which would be unconstitutional.

9. Mr. Dave also referred to the decision of this Court in *M/s. Shantistar Builders vs. Narayan Khimalal Totame and Ors.*, reported in (1990) 1 SCC 520, wherein while considering the provisions of Sections 20 & 21 of the Urban Land (Ceiling and Regulation) Act, 1976, this Court also had occasion to consider the width and ambit of Article 21 of the Constitution to include the right to shelter. It was observed that the right to life would take within its sweep the right to food, the right to clothing, the right to decent environment and reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view.

10. Mr. Dave contended that those people who were deprived of the benefits of the dam were being denied their rights under Article 21 of the Constitution and since the petitioner-association was championing their rights, the writ petition must be held to be maintainable.

11. Apart from the above, Mr. Dave submitted that the respondent No.5 had, in fact, filed a writ application in respect of the dispute which arose between the State of Gujarat and its neighbouring states in the matter of use, distribution and control of the waters of the Inter State Narmada River, including the height of the Sardar Sarovar Dam and the same had been duly entertained by this Court and orders and directions had been passed therein. There too, the question of maintainability had been raised but the writ petition had been entertained by this Court upon holding that water is a basic need for the survival of human-beings and is a part of the right to life and human rights as enshrined in Article 21 of the Constitution of India. It was also observed that while the destruction of trees on forest lands was undoubtedly harmful, large dams also converted waste land into agricultural land and made the area greener. Consequently, large dams can also become instruments in improving the environment.

12. Coming to the merits of the writ petition, Mr. Dave directed the major portion of his submissions against the respondent No. 6 with reference to *Khedut Mazdoor Chetna Sangath* which was alleged to be controlled by him. An attempt has been made to link the Narmada Bachao Andolan with the *Khedut Mazdoor Chetna Sangath* in order to establish a link between the respondent No.4, Smt. Medha Patkar, and the respondent No.6, Shri Rahul Banerjee. Mr. Dave submitted that large sums by way of foreign funds were being received by the respondent No.5 through its support groups and the same was being misutilized for criminal activities such as procuring and providing arms and ammunitions to those involved in the naxalite movement. Mr. Dave submitted that the allegations were of a very serious nature and required investigation by the CBI since the security of the nation was at stake. It was pointed out that there were several criminal cases pending against the respondent No.6 who was a supporter of the respondent No.5 \026Narmada Bachao Andolan and actively participated in its activities.

13. Mr. Dave submitted that not only was the Respondent No. 5 an unregistered organization but that since the last two decades an organized campaign had been designed and directed by it under the garb of social activism to oppose projects of national importance such

as the Sardar Sarover Dam in Gujarat and the Maheshwar, Omkareshwar and Indirasagar projects in Madhya Pradesh. Mr. Dave submitted that as a public spirited citizen Mr. Saxena had filed the writ petition for a direction upon C.B.I. to conduct an investigation into the affairs of the Respondent Nos. 4, 5 and 6 on account of the inaction of the other respondents.

14. Appearing for the respondent No.5, Ms. Indira Jaising, learned senior Advocate, strongly urged that since none of the fundamental rights of the writ petitioner-association had been adversely affected by the Narmada Bachao Andolan and its activities, the writ petition was not maintainable under Article 32 of the Constitution. Ms. Jaising urged that the writ application was the result of a grudge nurtured by Shri Saxena against Smt. Medha Patkar and in the process he had roped in the respondent No.6 in order to show him to be an associate of Smt. Medha Patkar.

15. Ms. Jaising referred to the counter affidavit filed on behalf of the respondent No.5 to the writ petition and the annexures thereto. Referring to annexure R-3 of the counter, she submitted that from the report it was quite obvious that Shri V.K. Saxena had a personal grudge against Smt. Medha Patkar which had motivated him to file the writ petition.

16. Reference was also made to annexure R-4 which was a report of an unprovoked attack on the respondent No.4 and her followers by the members of the Bharatiya Janata Party Yuva Morcha, Congress and National Council for Civil Liberties activists led by one Amit Thakkar and Shri V.K. Saxena. The demonstrators hurled abuse at Smt. Medha Patkar who was requesting them not to disturb the meeting. When Smt. Mallika Sarabhai tried to intervene, she too was threatened.

17. Ms. Jaising also referred to annexure R-6 to the counter which is a letter addressed to the trustees of the Jansahyog Trust, Bombay, by both Baba Amte and Smt. Medha Patkar indicating that the money awards which had been received by them were to be used for charitable purposes and not for the activities of the Narmada Bachao Andolan.

18. Ms. Indira Jaising submitted that Shri Saxena had a pathological hatred for Smt. Medha Patkar and her activities so much so that even Smt. Mallika Sarabhai was not spared in his relentless crusade against Smt. Medha Patkar and her friends.

19. Ms. Jaising denied that the Narmada Bachao Andolan had received any money from the McArthur Foundation, USA, as alleged in the writ petition. She submitted that the "Right of Livelihood Award" and "Goldman Foundation" had been jointly awarded in favour of Narmada Bachao Andolan, Baba Amte and Smt. Medha Patkar in 1991. This is a prestigious award given to individuals and organizations which have worked for the cause of environmental justice. Upon receipt of the said award, a joint decision was taken by the Narmada Bachao Andolan and Baba Amte not to accept the money received through the award but to create a trust in the name of Jan Sahyog Trust and the entire award money was deposited in favour of the trust with the condition that the money would not be used for any of the activities of the Narmada Bachao Andolan. Ms. Jaising submitted that poison has been spread by Shri Saxena as part of his campaign to denigrate Smt. Medha Patkar and her activities.

20. Ms. Jaising then submitted that the respondent No.6 -Rahul Banerjee, had been introduced in the writ petition only in order to show that he was involved in anti-national activities and that Smt. Medha Patkar and the Narmada Bachao Andolan had used him in their attempts to obstruct the construction of the dam. In the process, Shri Saxena has also tried to suggest that Smt. Medha Patkar was involved in anti-national activities and was utilizing foreign funds received by her in the name of the Narmada Bachao Andolan to arrange for purchase and supply of guns and ammunitions to anti-national elements who were engaged in disrupting the normal life of the citizens of India. The respondent No.6 \026 Rahul Banerjee has been made out to be a sympathizer of the naxalite movement and was using his connection with Smt. Medha Patkar to attain his objectives.

21. Ms. Jaising submitted that such ridiculous and absurd allegations merely demonstrate the extent of the grudge nurtured by Shri Saxena against Smt. Medha Patkar and his attempts to obstruct the lawful agitation carried on by Smt. Medha Patkar to ensure that the tribals who were being displaced on account of submergence of the habitats were duly rehabilitated and compensated for the trauma and shock experienced by them on account of such submergence.

22. Ms. Jaising forcefully urged that the writ petition was not maintainable and the stand taken that the respondent No.5 had violated the petitioner's fundamental rights under Article 21 of the Constitution, was without basis and was liable to be rejected. On the other hand, it was the right of the displaced persons which had been affected in violation of Article 21 of the Constitution which was canvassed by the respondent No.5. Ms. Jaising submitted that neither the State of Madhya Pradesh nor the States of Gujarat and Rajasthan, which were the ultimate beneficiaries of the Sardar Sarovar Dam, had come forward to question/challenge the activities of Smt. Medha Patkar and the Narmada Bachao Andolan. Only Shri Saxena had, in his individual capacity as President of the National Council for Civil Liberties, filed the writ application out of a personal grudge. According to Ms. Jaising, the writ petition had not been filed in the public interest and such grudge litigation had been deprecated and discouraged by this Court.

23. In support of her submissions, Ms. Jaising firstly referred to the decision of this Court in the case of Subhash Kumar vs. State of Bihar & Ors., reported in AIR 1991 SC 420, wherein while considering the maintainability of a writ petition under Article 32 of the Constitution, this Court observed that a petition under Article 32 for the prevention of pollution is maintainable at the instance of affected persons or even by a group of social workers or journalists. But recourse to proceeding under Article 32 of the Constitution should be taken by a person genuinely interested in the protection of society on behalf of the community. Public Interest Litigation cannot be invoked by a person or body of persons to satisfy his or their personal grudge and enmity. If such petitions were entertained, it would amount to abuse of the process of the court.

24. In this regard, reference was also made to the decision of this Court in Dattaraj Nathuji Thaware vs. State of Maharashtra And Ors., reported in (2005) 1 SCC 590, wherein also the scope of Article 226 of the

Constitution in entertaining 'public interest litigation' had been explained. This Court observed that 'public interest litigations' were to be admitted with great care and for redressal only of genuine public wrongs or injury and not for the redressal of private, publicity-oriented or political disputes or other disputes not genuinely concerned with public interest.

25. Reference was also made to the decision of this Court in the case of Dr.B. Singh vs. Union of India & Ors., reported in (2004) 3 SCC 363 which had been followed in Dattaraj Nathuji Thaware's case (supra). Several other decisions were also referred to by Ms.Jaising in support of her submissions which are in the same vein as those cited above and will only amount to multiplication of decisions.

26. Ms. Jaising submitted that this was a case of *suggestio falsi et suppressio veri* (A suggestion of falsehood and suppression of truth) and the writ petition was therefore liable to be dismissed.

27. The respondent No.6, Shri Rahul Banerjee, who appeared in person, denied the allegations in the writ petition which were directed mainly against him and urged that the same had been made only to persuade the Court into passing an order against Smt. Medha Patkar and the respondent No.5. He denied that the society being run by him, namely, the Khedut Mazdoor Chetna Sangath was engaged in any kind of unlawful and/or anti-national activities as alleged in the writ petition or at all. He submitted that he was not connected with the Narmada Bachao Andolan and the case of sedition under Sections 121 and 121 A of the Indian Penal Code had been quashed by the Madhya Pradesh High Court in Criminal Revision No. 942/2003 by its judgment dated 26th April, 2004. Shri Banerjee submitted that he was an alumnus of the Indian Institute of Technology, Kharagpur, and his association with Khedut Mazdoor Chetna Sangath was to prevent exploitation of tribals and adivasis. He submitted that in this regard the Sangath had filed a writ petition against the State of Madhya Pradesh alleging harassment by police officers in registering of FIRs, hand cuffing and locking up of tribals in various police stations when they objected to such exploitation. The matter reached this Court which observed that the Magistracy requires to be sensitised to the values of human dignity and to the restraint on power. The Court also observed that the reports of the CBI to the Judicial Magistrate revealed the sordid picture and the sorrowful plight of public spirited men whose desire was to prevent exploitation of the poor adivasis. Ultimately, directions were given to the CBI to investigate and register cases and prosecute the officers however high or low in the hierarchy of the administration for their lapses. Shri Banerjee submitted that the decision of this Court had been reported in JT 1994 (6) SC 60.

28. Regarding the allegation of receipt of illegal funds by him and his wife Subhadra Khaperde and using the same for inciting armed rebellions against the State, the respondent No.6 submitted that the funds had been received as fellowship grants from various bona fide agencies for implementation of development projects. All the said funds had been properly utilized for the purposes for which they had been granted and there were supporting vouchers in support of the same which had been duly certified by Chartered Accountants, copies

whereof had been marked as annexure R-9 to the counter filed by the respondent No.6. As to the funds received as fellowship grants from the McArthur Foundation, USA, the same were solely used for improving the reproductive health and rights situation of Bhil adivasi women and had no connection whatsoever with the work of the respondent Nos. 4 & 5 nor were they used to purchase arms with the intention of staging an armed rebellion against the State. Shri Banerjee added that the Foundation is a renowned funding agency having the permission of the Union Home Ministry to make such grants in India. It has funded over a 100 NGOs in India, including the Self-Employed Women's Association (SEWA), set up by the Magsaysay awardee and former Rajya Sabha Member, Elaben Bhatt. Shri Banerjee submitted that despite repeated investigations into sources and utilization of these funds by the Madhya Pradesh Police, the Union Home Ministry had found nothing untoward regarding the acquisition and utilization of such funds.

29. Shri Banerjee also referred to the affidavit filed on behalf of the State of Gujarat in which it has been stated that there are no criminal cases pending in the State of Gujarat against the respondent Nos.4, 5, and 6 and the one case involving the manhandling of two officers of the Gujarat Government while discharging their duty in village Barada in Madhya Pradesh was also compromised and disposed of by the Judicial Magistrate in March 2003.

30. Shri Banerjee repeated Ms. Jaising's submissions that the present litigation was the result of a grudge harboured by Shri Saxena against Smt. Medha Patkar and an attempt had been made to discredit her by suggesting that she was involved in anti-national activities which were allegedly being carried out by the respondent No.6 under the banner of Khedut Mazdoor Chetna Sangath.

31. Both the Union of India and the State of Madhya Pradesh had little to add and they relied on the affidavits filed on their behalf in the proceedings. In the counter affidavit filed on behalf of the Union of India, it has been generally stated that the Ministry of Home Affairs in its Foreign Contribution Regulation Act Division had not granted permission to the respondent No. 4 or certain organizations named in the writ petition to receive foreign funds. However, it has also been categorically stated that an inspection was carried out in terms of Section 14 of the Foreign Contribution (Regulation) Act, 1976 into the books of accounts of among others the Narmada Bachao Andolan, Badwani, Madhya Pradesh in 2002 and the same did not reveal any instance of violation of the aforesaid Act. A similar enquiry had also been conducted in 2000 and then also no such violation had been detected. The said information was conveyed to the Chief Minister of Gujarat by the Minister of State, Ministry of Home Affairs, Government of India, by letter dated 26th August, 2003. The contents of the said letter has been made annexure R-1/1 to the affidavit affirmed on behalf of the Union of India and reads as follows:-

"Kindly refer to your letter No.CMS/G01/150 dated the 27th September, 2001 addressed to the Hon'ble Dy. P.M. regarding alleged violation of Foreign Contribution (Regulation) Act, 1976 by the functionaries of Narmada

Bachao Andolan (NBA).

This matter was investigated in some detail under the provision of the said Act. The accounts/records of the NBA and a number of NGOs associated with it were inspected but no specific instance of any violation of FCRA, 1976 was detected."

32. In the affidavit affirmed on behalf of the State of Madhya Pradesh, it has been stated that the existing laws were sufficient to take care of the reliefs claimed by the writ petitioner and appropriate action under the existing laws had already been undertaken.

33. Having heard the learned counsel for the respective parties and having considered the materials on record, we are of the view that although ordinarily in a case like this a writ petition under Article 32 of the Constitution would be maintainable, in the facts of this case the writ petition does not call for any interference by this Court. The various decisions cited by counsel on both sides indicate in what circumstances public interest litigation may be entertained by the Courts. We share the same views. We are also of the view that public interest litigation may be entertained when an issue of great public importance is involved, but not to settle private scores as was held in Dattaraj Nathuji Thaware's case (supra). Furthermore, in an application under Article 32 of the Constitution there must be an element of infraction of one or the other fundamental rights contained in Part III of the Constitution. Although, the writ petitioner has attempted to show that the writ petition had been filed for the benefit of the people of the States of Gujarat, Madhya Pradesh and Rajasthan, the facts as sought to be projected clearly indicate that the writ petition has been filed out of grudge harboured by Shri Saxena against Smt. Medha Patkar. Except for vague allegations regarding receipt of foreign funds by the respondent Nos. 4, 5, and 6 and their alleged use for subversive activities, none of the allegations have any evidentiary value as they are unsupported by any evidence as such. There is no material on record to show that foreign funds have, in fact, been received by the respondent No.5 or that the same had been misutilized for subversive activities of an anti-national character. On the other hand, there is evidence to show that certain monetary awards had been received jointly by the respondent No.5 and Baba Amte which had been vested in a trust which had no connection with the activities of the respondent No.5. In fact, the writ petition appears to have been filed as a fishing exercise to try and procure evidence against the said respondent Nos. 4, 5 and 6. Having seen the annexures to the counter affidavit filed on behalf of the respondent No.5, we are inclined to accept Ms. Indira Jaising's submissions that Shri Saxena had a private grudge against Smt. Medha Patkar which had motivated him to file the writ petition and not in the public interest as claimed by him.

34. The respondent No.6 has been introduced in the writ petition to malign the respondent Nos. 4 and 5 by making allegations of subversive activities against the respondent No.6 and trying to establish a link between the respondent No.6 and Smt. Medha Patkar to her

discredit. There is no direct evidence of any kind of subversive activity allegedly engaged in by the Narmada Bachao Andolan which could be said to be anti-national. On the other hand, the respondent No.5 appears to be genuinely concerned with the rehabilitation of the tribals and the other habitats of the submerged areas in keeping with the decision of this Court that the rehabilitation programme should be completed before submergence of the areas which were inhabited by them.

35. Although, the writ petition has been shown to have been filed to protect the interest of the people of the three States of Gujarat, Madhya Pradesh and Rajasthan, except for Shri Saxena representing the writ petitioner association, there is no other individual who has been impleaded as petitioner to support such an argument. Although, the writ petition is alleged to be in the nature of a public interest litigation, the same appears to be a 'private interest litigation' to discredit and diffuse the agitation undertaken by the respondent No.5 for rehabilitation of the displaced persons from the dam site before submergence of their habitat.

36. In our view, the materials in the writ petition consist only of vague allegations without any proper foundation. No case has therefore been made for a direction to the CBI to investigate into the said allegations.

37. Having regard to the view taken by us we do not intend to separately deal with the decisions cited on behalf of the respective parties.

38. The writ petition is accordingly dismissed with costs assessed at Rs.5,000/-.