

**IN THE SUPREME COURT OF INDIA**

**WRIT PETITION (CIVIL) NO. 69 OF 2006**

**IN THE MATTER OF**

**NATIONAL CONCIL FOR CIVIL LIBERTIES ..... PETITIONER**

**VERSUS**

**UNION OF INDIA & OTHERS ..... RESPONDENTS**

**WRITTEN SUBMISSION BY THE PETITIONER**

**Issue of Maintainability**

The preliminary objection had been raised in respect of the maintainability of the present petition primarily on the following grounds by respondent No.5 – NBA:

(a) That the petition is under Art. 32 of the Constitution of India and no averment has been made of violation of fundamental right on account of which the petition could be entertained;

(b). That the petitioner had filed the said petition having a grievance against the respondent Nos. 4 and 5 and hence, the same was motivated against the respondent no. 4 & 5. Press-clippings were relied upon to establish that the petitioner had been vocal in the press about the activities of the respondents Nos. 4 and 5 and had made direct statement about respondents No. 4

**Submission**

The present petition clearly raises substantial issues of public importance and having a direct impact on the society as a whole. The very foundations of the case revolves around the alleged lack of transparency in the activities of respondents Nos. 4, 5 & 6 as

well as similarly placed support groups of respondent No.4 including the sources of fund and the consequent utilization of the same, which hence leads to mis-utilisation of such funds and diversion to activities which are unlawful and not in the larger interest of the society as a whole. Therefore, prima-facie case was established on the basis of averments and prima-facie documents including Government records [page 352 & 354 (important) of the petition, wherein the criminal bio-data of respondent No.6 elaborating the concerted activities with respondent No.5 has been recorded by the concerned authority, page 344 & 347 & 350 (important) of the petition where the press releases by respondent No.5 itself reflects the close co-ordination and simultaneous consolidated mode of operations between respondents Nos. 5 and 6 apart from other documents in this regard] that there is a clear nexus of acceptance of funds from different sources (please refer to page 115 to 116 of the writ petition) and the consequent misutilisation of the same as is reflected from the following: (The reference of support groups interalia given at page 8 Para 7 of the petition as well as at page 332 & 333).

- (i) Criminal activities like causing damage to public property including by forcefully taking possession of Dam sites and causing damage thereto including taking possession of other Government properties and causing damage thereto, for which various FIRs have been filed against the activists of respondent No.5 since many years and such activities continue till date;
- (ii) Threatening Government officials from discharging public duties as well as assaulting Government officials as also reflected from the various FIRs over a long period of time for such offences;

- (iii) Further allegations of violent activity in this connection which are not in the interest of development of the country;
- (iv) Repeated instances of disrespect shown to the constitutional institutions including the Apex Court as evident from the in-house publications / press releases / press reports (page 18, 19 & 20 of the petition) in this connection of the respondent No.5 itself.
- (v) Specific instances of circulating of various comprehensive financial documents/reports which are not within the realm of mere reports highlighting social problems but actually covering financial aspects of the large development projects including dissemination of wrong information resulting in withdrawal of guarantees and financial back-up by foreign institutions, foreign Governments and international agencies on liberal terms resulting not only in financial losses but also effecting the implementation of vital projects, thereby directly affecting the quality of life of each and every citizen of the country. Please also refer to page no. 88 of the petition outlining specific instance.

The above series of connected activities which arise from the purposeful unorganized modus-operandi adopted by the respondent Nos. 4, 5 & 6 and other similar support groups clearly establishes beyond doubt the violation of fundamental rights of all citizens at large including the people of the States of Madhya Pradesh, Gujarat, Rajasthan and Maharashtra where such development projects had been repeatedly stalled. The observations made by the majority view of this Hon'ble Court to the effect that respondent No.5 had stalled the Sardar Sarovar Project also bears testimony to the above infringement and by giving a narrow interpretation the entire objectives sought to be achieved by Article 32 of the Constitution of India are sought to be frustrated. With the

growing of economy and passage of time, it is also held by the judicial pronouncements that narrow reading of the fundamental rights cannot be sustained. In this regard, the concept of “life” as provided under Article 21 of the Constitution of India is important and has been well established in the recent judicial pronouncements, which are as follows:-

1. (a) 1990 1SCC 520  
(b) AIR 1990 SC 630
2. (a) 1985 3SCC 545  
(b) AIR 1986 SC 180

(As far as the averments in connection with the infringement of fundamental rights is concerned, the same are covered at page no.24, 25, 32, 34, 37 of the petition as well as with the affidavit at page no. 315, 316 etc. The petitioner is 16 years old registered and recognized organization, some of the petitioner’s contribution for public good is outlined at page no. 3, 4 & 5 of the petition.)

As far as the issue of private litigation is concerned, except for reflecting certain press-clippings showing alleged statements made by Mr. V K Saxena, who is also President of the petitioner organization to the effect that he has aired his personal views against respondents Nos. 4 and 5, not a shred of evidence or averment reflecting any personal gain or advantage to the petitioner organization in this regard has been made by respondents Nos. 5 or 6. In view of this fact, no allegation of any personal gain has been made against the petitioner organization and hence there is no basis of seeking the dismissal of the writ petition merely by terming it as a private interest litigation without any substantive basis except press-clippings. It is an established fact as also contended by

respondents Nos. 5 and 6 themselves that in the democracy every one has a right to speech and to express opinion without fear and reservation. The respondents Nos. 5 and 6 therefore, cannot be permitted to take a different stand as a matter of convenience and to seek dismissal of writ petition of such a serious nature merely by alleging that the President of the petitioner organization has been airing his views against the concerned respondents. If writ petitions were to be decided on this touch-stone, the same view would apply to the concerned respondents themselves who have unleashed a campaign by issuing repeated press-releases on various subjects from time to time which were even sub-judice at the instance of the Respondent No 4 & 5 itself and including on the subject matter of the present petition. Additionally, it is also relevant that this Hon'ble Court in fact, was constrained to restrain the respondents Nos. 4 & 5 from issuing press-statements during the course of hearings in the Sardar Sarovar Project matter. In that background, if the respondent No.5 was held to have a locus-standi in pursuing a writ petition, different principles cannot be applied as far as the petitioner organization is concerned, as is sought by respondents Nos. 4, 5 & 6.

**Admission of Militant activities by Respondent no. 6**

The Respondent No. 6 in his counter affidavit has annexed a copy of book "Facilitating Kansari" written by him and his wife Subhadra as annexure R-10 at page no. 133 to 142. In the said annexure at page no. 140, he has written, "the women organized under Narmada Bachao Andolan and Khedut Mazdoor Chetna Sangath, two of the mass organizations in this region have been particularly militant and on some occasions, even surpassed their men in their bravery in fighting the repressive organ of the Govt.

Consequently some times as a matter of strategy, the women have been pushed in the front”. Respondent No. 6 in his counter affidavit has also annexed minutes of the meeting of the Chief Secretary as annexure R-7 (page 65 to 68). In the said annexure at page 65 authorities have highlighted anti – social activities of respondent no. 6 as well as confirmed the strategy of the organization to put the village women and children in front so as to create a difficult situation for the government forces. Respondent no. 6 own admissions as well as minutes of Chief Secretaries meeting proves beyond doubt that respondent no. 4, 5 & 6 are involved in terrorizing Govt. functionaries and using innocent women and children as a shield to protect themselves. Statement of respondent no. 6 in Annexure R 10 for his own organization as well as for Respondent no. 5, NBA proves beyond doubt that local and foreign funds received by him in various accounts were utilized for militancy in that region as mentioned in MP Govt. Vigilance report at Annexure P-3 at page 65 & 66 of the main petition.

**False Statement by Respondent No. 5 & 6 and lied on oath**

Respondent No. 5 in its counter Affidavit (page 14, 15 & 20) vehemently denied any connection with respondent no. 6. Respondent No. 5 in its Affidavit addressed Respondent no. 6 as “one Rahul Banarjee” at several places. Similarly Respondent No. 6 in his counter affidavit (page no. 19 point no. 63 and 64) also denied any connection with respondent no. 4 & 5 and said on oath he is working independently of respondent no. 4 & 5. Respondent No. 6 Rahul Banarjee during his appearance before this Hon’ble Court reiterated his statement although he admitted received foreign funds. Documents such as copy of final report of Devas Police Annexure P-2, Copy of Vigilance Report Annexure P-3, Copy of NBA press note dated 06/04/2001 and 11/04/2001 Annexure P-33 (colly)

and Bio-Data of Rahul Banarjee Annexure P-34 have proved beyond doubt that he is one of the members of the support group of respondent no. 4 & 5 and they are jointly working. Since the respondent no. 5 & 6 have given false statement on oath and lied before this Hon'ble Court, they deserve exemplary punishment for this act.

Respondent No. 5 in their counter affidavit (point 3.2 at page 9) have alleged that petitioner is an accused in an FIR lodged by Gujarat Government in an incident where he alongwith other political activists physically assaulted at Medha Patkar (respondent no. 4) at Sabarmati Ashram in Ahmedabad. This is totally false and misleading statement by the respondent no. 5 to paint the petitioner as a criminal, however the fact is that nowhere in the Govt. FIR petitioner's name has been mentioned as an accused (Page 7 & 8 of Rejoinder to the reply of Respondent No. 5 by the Petitioner). The respondent No. 5, to mislead this Hon'ble Court, deliberately chose to annexe copy of press report dated 08/04/2002 as Annexure R 4 at page 96 of counter affidavit, instead of copy of FIR filed by the Gujarat Govt., which is a reliable and authentic document to support their statement. Such false statement on oath requires exemplary punishments to the concerned respondents.

Learned Senior Counsel Indira Jaisingh during argument repeatedly conveyed to this Hon'ble Court that several criminal cases have been filed by the petitioner in various part of the country against Respondent no. 4 (Medha Patkar). This statement is totally false, misleading and without any substance. The petitioner has filed only one defamation case in 2001 at Ahmedabad, which was later transferred by this Hon'ble Court to MM Court New Delhi. Another defamation case, which the petitioner has filed against respondent

no. 4, at Ahmedabad in the year 2006, for her false and defamatory statement, is under investigation by the police. Petitioner has not filed any other case in any other part of the country as stated by learned counsel of respondent no. 5. In fact it is respondent no. 4 who is filing criminal defamation cases against various people at different parts of the country, which were later dismissed in default [page no. 21 point (f) of the petition].

**Crucial issue pertaining to lack of appropriate regulation for ensuring transparency in acceptance and consequent utilization of funds by social organization within the country.**

It is reiterated, as also mentioned in the contents of the writ petition as well as in the additional affidavits that the present petition raises a serious issue inter-alia on the lack of a proper regulation and mechanism for ensuring regulated acceptance of funds and consequent utilization of the same for achieving social objectives by requisite social organization in a transparent manner. The consequential effect of misutilisation and diversion of funds received by social organizations within the country, which in certain cases could have serious detrimental effect on the society at large, cannot be stated to be a non-issue that can be brushed aside. The very fact that certain High Courts within the country have taken cognizance of this aspect and made observations about the serious issues arising from such lack of regulation, needs to be taken judicial note of by this Hon'ble Court. Under the provisions of Article 142 of the Constitution of India, this Hon'ble Court has stepped in on various occasions wherever a serious lacunae in appropriate laws have been noticed which have been resulting in serious issues for the society at large. In this connection, the Law Commission report have already been relied upon during the hearing of the present matter, which clearly reflects the gravity of the



situation on similar line and hence, also the present matter requires deeper consideration. The fact that there is an admitted lacunae in so far as there are no appropriate Regulations/Enactments to regulate the funding and consequent utilization of the said funds and activity of various social organizations within the country (though there is a specific enactment for regulating the foreign contributions by such social organizations) coupled with the fact that numerous instances of serious misutilisation of such funds have come to light over the recent past which directly affects the society at large, there is a serious requirement for taking cognizance of the situation before the same reaches an alarming proportion. The timely intervention of this Hon'ble Court in similar situation in the past are well reflected from the following judicial pronouncements:-

1. 1984 2SCC 244
2. 1998 1SCC 226 (PAGE NO. 49,50,51,66 etc)
3. 2002 5SCC 294

(This larger issue of public importance has been raised in the petition as well as in the reply affidavit filed by the petitioner and references can be found at pages 336, 337, 454, 455, 456, 457)

### **Summary**

The entire thrust of the respondent Nos. 5 and 6 is limited to the issue of maintainability. The larger issue requires deeper consideration especially in the light of the fact that various prima-facie material is available on record which clearly indicates the serious repercussion on account of the modus operandi adopted by the concerned respondents. The fact that large number of criminal cases stand registered on account of activities

including damage to public property, threatening of Government officials discharging public functions, other serious violent activities clearly do not fall within the realm of lawful and peaceful resistance to development projects on the ground of point of view held by the concerned organization. The existence of such large number of criminal cases coupled with the fact that there is an admission of the concerned respondent No.5 having support groups and itself not being registered call for a closer scrutiny. It is relevant at this stage to point out that the reliance placed on the Government of India's affidavit by the respondent No.5 is completely mis-placed and in fact the entire case which is highlighted by the petitioner organization clearly states that the respondent No.5 organization purposely does not register itself to avoid transparency and under the guise of running a people's movement, funds are accepted under different names and consequently utilized for activities that are borne out from the various criminal cases pending against the activists of respondent No.5 as well as against respondent No.6 itself. This serious nexus cannot be ignored and in fact, it is for this reason that prima-facie the affidavits of State of Madhya Pradesh and the State of Gujarat as well as the Union of India clearly call for a closer scrutiny in to the operations of the support group. It has been stated in the affidavit of the Union of India itself that appropriate information has been called for from so-called support groups of the respondent No.5 organization though restricting itself only to the foreign contribution issue. Therefore, this initiated process at this stage cannot be allowed to be thwarted in any way and in fact, the entire process requires to be expedited. The very fact that the Union of India's affidavit clearly states that though infirmity in respect of breach of Foreign Contribution Act was not found on account of the enquiry made into the accounts of respondent No.5 and one national institute for women, child and youth

development (refer page 469) Association, further concretizes the allegation that other support groups have not been enquired upon and are therefore, being enquired upon at this stage only. Therefore, the said process is required to be undertaken independently and in accordance with law. In fact, the various criminal proceedings which are related to the activities of respondent No.5 are also required to be expedited for meeting the ends of justice for all those concerned.

It is also relevant to point out that the concerned order of the Hon'ble High Court of Gujarat has already been placed on record before the issuance of notice by this Hon'ble Court and further, the earlier order of withdrawal of the earlier writ petition from this Hon'ble Court was also forming a part of the record of the Petition. Therefore, there is no substance in the allegation of suppression, which is merely an attempt to divert the attention of this Hon'ble Court from the main issue. It is also crucial to point out that the Hon'ble High Court of Gujarat has also not deemed it fit to dismiss the Special Civil Application outright and had in fact, provided for the petitioner organization to make a representation to the Government of India. In spite of repeated follow-ups right uptill the filing of the writ petition before this Hon'ble Court, efforts were made by the petitioner to pursue the representation and requests with the concerned authority, but no information or result was communicated to the petitioner. It is only now, as is evident from the affidavit of the Union of India, that the legal process has been initiated in regard to the allegation that the respondent No.5 is operating through various support groups and accepting funds indirectly which are thereafter utilized for activities not in the interest of the society at large, though restricted to foreign contributions at this stage which according to the

Petitioner needs to be enlarged to encompass the sources of local funds and consequent mis-utilization. Therefore, even on this ground, there is no substance in the contentions raised by the respondent to seek dismissal of the writ petition at the threshold and to seek a certificate of endorsement of its activities from this Hon'ble Court.

In fact this Hon'ble Court has recently observed in one of the judgments that the prima-facie contents of the allegation and the substance of the same are also critical aspects required to be examined by the Courts in a public interest litigation and the same cannot be discarded merely on the ground of certain vested interests alleged to be involved qua the petitioner who was a rival politician in the said case. The said judgment in the case of Vishwanath Chaturvedi V/s Union of India and others in write petition (civil) no.633 of 2005 is enclosed herewith for the reference of this Hon'ble Court. In the above circumstances, the petitioner organization prays for the entertainment of the present writ petition and also further prays for this Hon'ble Court to intervene for passing appropriate guidelines for regulation of sources of funds and consequent utilization of such funds for social objectives by different social organizations within the country on similar lines, as provided for under the Foreign Contribution Regulation Act, which deals only with foreign contributions received by social organization (assistance in this regard can also be taken from the law commission report relied during the hearing). Additionally, this Hon'ble Court may order appropriate investigation in to the sources of funds indirectly accepted by respondent No.5 organisation through its various support groups as well as into the activities undertaken by utilizing such funds which are not in consonance with the interest of the society at large. This Hon'ble Court may also be pleased to expedite the

disposal of various criminal complaints pending at different stages against the activists of respondent No.5 as well as respondent No.6.

Filed by

FILED ON: 17/05/2007

(E C AGARWAL)  
ADVOCATE FOR PETITIONER