
(2014) 09 GUJ CK 0014
In the Gujarat High Court
Case No : Writ Petition (PIL) No. 80 of 2013

Gautam Dasharathlal Thaker	Vs	APPELLANT
State of Gujarat and Others		RESPONDENT

Date of Decision : 12-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 09 GUJ CK 0014

Hon'ble Judges : Anant S. Dave, J; Mohinder Pal, J

Bench : Division Bench

Advocate : M.J. Mehta, Advocate for the Appellant;

Final Decision : Disposed off

Judgement

Anant S. Dave, J.

1. Heard learned counsels appearing for the respective parties.

2. At the outset it is not in dispute that writ petition PIL 80 of 2013 is solely based on a report of the Controller and Auditor General of India (CAG) named as "Audit Report (PSUs) for the year ended 31st March 2012-Report No. 1 of 2013" and writ petition (PIL 97 of 2013) which was also based and filed solely on the basis of report of CAG and in the above case Division Bench of this Court (Coram: Hon'ble the Chief Justice Bhaskar Bhattacharya and Mr. Justice J.B. Pardiwala) by CAV Judgement dated 4.12.2013 in paragraphs 37 and 38 passed following orders:

"37. Before parting, we deem fit to observe that a petition in public interest should be filed with all seriousness and after doing the necessary homework and inquiry. A public interest petition should not be filed solely on the basis of the report of the CAG without anything more. It is a different thing if report of the CAG is placed in support of other materials relied upon by the petitioner in support of his case. In the present case except one document i.e. the report of the CAG on the subject nothing has been placed on record. In such

circumstances, any counsel appearing in a public interest litigation being a member of a noble profession owes a duty to draw the attention of the petitioner filing a public interest litigation to the issues where controversy itself is no longer *res integra*. A public interest litigation is not in the nature of an adversarial litigation but is a challenge and an opportunity to the government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to sure them social and economic justice which is the signature tune of the Constitution. In the matters of public interest, we feel that the counsel appearing for the petitioner owes a higher degree of responsibility before accepting the matters relating to an issue, which requires no adjudication. It not only wastes precious time of the Court but thereby prevents the Court from deciding other deserving case.

38. For the foregoing reasons, we do not find any merit in this petition and the same is rejected. However, in the facts and circumstances of the case there shall be no order as to costs.

3. Thus, in the above decision, a Division Bench of this Court threadbare considered various authorities of the Apex Court pertaining to scope of exercise of powers under Article 226 of the Constitution of India in public interest litigation and dismissed the writ petition which came to be challenged before the Apex Court and in a reported decision in case of *Pathan Mohammed Suleman Rehmatkhan Vs. State of Gujarat and Others*, held as under:

"14. We are of the view that these are purely policy decisions taken by the State Government and, while so, it has examined the benefits the project would bring into the State and to the people of the State. It is well settled that non-floating of tenders or absence of public auction or invitation alone is not a sufficient reason to characterize the action of a public authority as either arbitrary or unreasonable or amounting to *mala fide* or improper exercise of power. The courts have always held that it is open to the State and the authority to take economic and management decisions depending upon the exigencies of a situation guided by appropriate financial policy notified in public interest. We are of the view that is what has been done in the instant case and the High Court has rightly held so. We, therefor, find no reason to entertain this special leave petition and the same is dismissed."

4. Thus, the contention based on the report of CAG solely in this petition in the context of pleadings and prayer made by the petitioner cannot be subject matter of public interest litigation and considering overall facts and circumstances this writ petition (PIL) when solely based on report and extract of the CAG it is not advisable for this Court to proceed further in PIL keeping it open for the petitioner to take any appropriate action in accordance with law if deem proper.

5. The petition is disposed. Notice discharged.