

(1993) 11 BOM CK 0019

In the Bombay High Court

Case No : Writ Petition No. 2051 of 1993

Nanded City Development Committee

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 11-11-1993

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Municipalities Act, 1965 — Section 319

Citation : (1994) 2 BomCR 7

Hon'ble Judges : V.V. Kamat, J;S.G. Mutalik, J

Bench : Division Bench

Advocate : R.R. Jethlia, for the Appellant; V.G. Gangapurwala, A.G.P. for respondent Nos. 1 and 2 and S.V. Kurundkar, for the Respondent

Judgement

V.V. Kamat, J.—Letter-petition and the public interest litigation are gifts and innovations of the Indian Writ Courts as regards the law of Writs. The Concept of Social Welfare State naturally introduced spiral activities of the Governments. Legal rights are situations of assertions in a legal system which provide an eager maintenance of conditions under which an individual can develop the best in himself. The spiral rise necessitate many aspects of State action either in connection with an individual or in connection with a class. Naturally it became more than difficult to assure a sense of aliveness in this connection. Many aspects of activities emerged because the law is an instrument of Social Engineering which has to be alive for the felt necessities of time. These aspects increased the responsibility of the Writ Courts which no longer could afford to be strangers to the situation. The function of the Writ Court naturally got concerned with the conditions of Jail, with under-trial prisoners, introducing aliveness in Public Health Administration, certain concern with legal rights of destitute, beggars, foot-path dwellers etc. In regard to which the Writ Court by its functioning in the context introduced the necessity of keeping the concerned authorities alive to the respective needs of the situation. It is in this way the courts entertain letter petitions as well as welcome the public interest litigations.

At the same time, the Court was not unaware of the limitations, self-imposed and controlled inherently by the prerogative nature of its jurisdiction. The Court has been alive to realise that the ultimate problems of law and order, necessary administration relating to social welfare activities, necessary steps to be taken in regard to various needed situations are ultimately to be regarded as the State activity in the concerned direction. The function is to meet the situation of urgency demanding an early justice to be dealt with. The Court got concerned with its duty to introduce an element of life and liveliness in the concerned spheres of State activity. The Writ Court has always refrained from giving specific directions. Not that the Court has not done it as and when it was felt really necessary.

2. In the process the grievances that come up before the Writ Court get circumscribed into certain categories. There are certain grievances which may not really come in the strict sense of the terms expressly fall within the powers of the Writ Court. This Court, therefore, adopted for itself certain guidelines.

3. A grievance in respect of the life or personal liberty of the person or class of persons represented became the subject matter of entertainment. A grievance made on behalf of a class, such as under-trial prisoners, Hospital staff, Hospital conditions, illustratively interested as a class in its redressal also became the subject matter in this category. It is in this connection, although, illustratively but not exhaustively the guidelines have circumscribed and described the general features of exercising jurisdiction.

4. Apart there-from the Writ Court has never assumed the role of an Administrator or a regulator in any way. The Writ Court has functioned only as an instrument to introduce an element of concern and liveliness in the matters of activities which have been placed before it in the form of a grievance or redressal. It is always with a view that the Authorities have to act with a spirit of people-orientation.

5. Passage of time and the nature of State activity has widened the sphere of what may be called as legal rights either of a person or of a class. Acceptance that the principles of natural justice and fair play have also widened the spheres of concern of the Writ Court. The Writ Court always strikes a balance as regards its limitations and also as regards the situation that it is the Government that is the final arbiter of Governmental activity within limitations what the Writ Court does as stated above is to post, its concern by injecting the element of necessity to look after the situation - the subject matter of the Writ Petition. The Writ Court keeps in mind that it is not its function to distribute wheat and rice; that it is not its function to supply minimum quantity of kerosene to the members of the society. However, the Writ Court gets concern with the necessity of control and directions.

6. It is with these observations, as will take up for consideration the present letter petition.

7. It would not be out of place to record that a similar view is expressed by us in Writ Petition No. 2965 of 1992 on September 17, 1993 dealing with a writ petition regarding the traffic problem of Jalna Road which is the main artery of traffic of metropolis.

8. The registry received a letter dated August 23, 1993 regarding impure water supply to the Nanded city in the last summer and beginning of the rainy season. It mentioned that nearly 300 citizen of Nanded city were admitted in the Hospital and out of them about 7 breathed their last. All these were patients of Gastroenteritis and other contagious diseases, as a result of supply of impure water. The grievance is that the Municipal administration had been a stranger to the situation. This was registered as the present writ petition. We requested Mr. R.R. Jethlia, one of the Senior Counsel of this Court to appear Amicus curiae. He presented in pursuance thereof the present writ petition, in the matter of failure to discharge statutory obligations on the part of the Municipal Council, Nanded, making a grievance also against the State Government for its failure to enforce statutory obligations which was the root cause for the public health problem of the city. In the writ petition all the concerned authorities are joined as respondents Nos. 1 to 4, and it is prayed that the respondents be directed to implement the water scheme for the supply of safe, pure and unpolluted drinking water to the town of Nanded city. It is also prayed that the respondents be directed to present the said scheme to this Court. There is a further prayer that those who are responsible amongst the respondents and their subordinates be proceeded with for their gross negligence of duties. There is a prayer for compensation also.

9. The averments of the petition can be summarised that the petitioner is the convener of a Committee, "NANDED SHAHAR VIKAS SAMITI". The impurity of the water supply is stressed in the petition describing the mismanagement, miscalculation in the matter of supply of clean drinking water during the concerned period, spreading unhygienic conditions leading to spread of infectious disease like gastro, cholera etc. A grievance is made that their representations were not adequately dealt with even though, there have been cases of victims and deaths as consequences of the situation. It is averred that section 319 of the Maharashtra Municipalities Act, 1965 gives power to the State Government of general control as regards the implementation of the provisions of the Act by the Municipal Council. It is averred that the State Government is also vicariously liable for the inaction of the Municipal Council, in regard to the supply of water.

10. This has been met by the affidavits of return, one from the Under Secretary, Urban Development Department of the State of Maharashtra and the other from the Collector, Nanded. Reading these affidavits, as usual with the parties to the litigation the averments are denied and that is but natural but we get the feeling that the affidavits of return have made the concerned respondents more than alive to the situation especially the legal consequences that follow if averments of the petition are established. It is not our function especially in a writ petition of

this nature to go into the disputed questions of facts. Satisfaction that is received from the affidavits of return is that the concerned authorities are more than alive to the situation. Whatever has happened has a strong indicator to the future awareness of the situation. Irreducible minimum wants of the public as well as society are food, clothing and shelter and none can continue to enjoy food without a glass of pure water which is required more often than not to many during this short interval of taking food. Taking into consideration all these aspects we feel that we have done our duty to introduce aliveness, seriousness and an attitude of responsibility to this very important problem of public health. We do not desire anything further in the matter. We make it clear that the proceedings that are already initiated would be taken to their logical end and the Presiding Officers of the respective courts shall not be in any way affected by our observations which are of the limited character dealing with the present public interest litigation. The petition gets disposed of.