
(2012) 02 GUJ CK 0063
In the Gujarat High Court
Case No : Writ Petition (PIL) No. 21 of 2012

Rajesh Laxmichand Mota

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 21-02-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 148, 149, 21, 226
High Court of Gujarat (Practice and Procedure for Public Interest Litigation) Rules,
2010 — Rule 3

Citation : (2012) 2 GLH 375

Hon'ble Judges : J.B. Pardiwala, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Ratna Vora, for the Appellant; Tushar Mehta, A.A.G. and Mr. JK Shah, AGP for Respondent 1, for the Respondent

Judgement

Honourable Mr. Justice J.B. Pardiwala

1. By way of this petition in the nature of Public Interest Litigation, the petitioner, a resident of city of Ahmedabad, has prayed for the following reliefs: 12.1 May be pleased to admit this writ petition.

12.2 May be pleased to issue a writ of mandamus or any other appropriate writ declaring the act of the respondent nos.1,2,3,4,5,6 and 7 for incurring expenditure of "Sadbhavana Mission" from the different departments of Government treasury as illegal, unjust, bad at law, arbitrary and against the provisions of Constitution of India.

12.3 May be pleased to pass an order/s directing the respondent no.1 to recover all the expenditures paid to different agencies/institutions etc. in the name of "Sadbhavana Mission" by the respondent nos.2,4,5,6 and 7 and deposit the same amount to the treasury of the State Government.

12.4 May be pleased to restrain the respondent nos.1 and 2 from making any further payments for expenditure of "Sadbhavana Mission" to any agencies/

institutions etc. till the final hearing of this petition.

12.5 May pass any other order/s which is deemed fit and proper in the interest of justice.

Facts in brief for the purpose of deciding this petition can be summarised as under : 1. It is the case of the petitioner that he is one of the taxpayers and wants to bring to the notice of this Court in public interest the manner and method in which the respondents, more particularly, respondent no.3, the Chief Minister of Gujarat, is spending money from the Public Exchequer to meet with the expenses which are being incurred towards a politically motivated programme in the name of "Sadbhavana Mission".

2. It is the case of the petitioner that after the Supreme Court referred the matter to the concerned Metropolitan Magistrate of Ahmedabad in so far as the involvement of respondent no.3 as Chief Minister of the State in connection with communal riots of 2002 is concerned, respondent no.3 construed the order of the Supreme Court as giving him a "clean chit" and, therefore, he put a message for the people of Gujarat on his personal blog www.narendramodi.com dated 13th September 2011. According to him, the message on the blog reads as under :

The unhealthy environment created by the unfounded and false allegations made against me and Government of Gujarat, after 2002 riots, has come to an end. For the past ten years, it has become fashionable to defame me and the State of Gujarat". He further stated that, "I humbly submit before you that, as part of this responsibility to strengthen social harmony and brotherhood, I am thinking of starting a movement of "Sadbhavana Mission". As part of this Sadbhavana Mission, I have resolved to fast for three days from Saturday, the 17th September 2011. My fast will conclude on 19th September.

3. It is his case that on 14th September 2011 he read in the local newspapers that respondent no.3 is going to organize an event where he would be fasting for three days under "Sadbhavana Mission" at different places in the State of Gujarat. On 18th September 2011, the petitioner read in the "The Times of India" that the Government is going to pay Rs.30 lac towards the rent of Convention Hall, to the Gujarat University. On the very same day, the petitioner read in the newspapers that respondent no.4, the Executive Engineer of Navrangpura (R&B Department) has paid a sum of Rs.30 lac on behalf of the Government of Gujarat to respondent no.5, Registrar of Gujarat University, towards rent for the use of convention hall as a part of the programme of "Sadbhavana Mission".

4. It is his case that to confirm this reporting by the newspapers, he preferred an application through his advocate under the Right to Information Act before the appropriate authority asking for details of the payment made to the Gujarat University towards the rent. According to him, under the Right to Information, the Public Information Officer, Navrangpura informed that payment of Rs.30 lac was made by way of a cheque bearing no.536021 dated 15th September 2011

drawn on State Bank of India, Main Branch, Ahmedabad in favour of Registrar, Gujarat University, Ahmedabad. Thus, confirmed what was reported in the newspapers about the expenses being incurred and the money being paid from Public Exchequer. It is also the case of the petitioner that as per the newspaper reports the Government has spent huge amount of about Rs.50 crore towards advertisement of "Sadhbhavana Mission" launched by respondent no.3, the Chief Minister of the State. It is also his case that "Sandesh" newspaper reported that respondent no.6 i.e. Secretary, Information and Broadcasting Department would be spending Rs.22 crore for one day's advertisement which would amount to Rs.66 crore in three days. Moreover, additional expenditure would also be incurred for internet and news channel marketing.

5. However, it is the case of the petitioner that he is unable to specify the exact amount spent by the Government towards the expenses incurred on account of "Sadhbhavana Mission" as the information in this regard is conflicting. According to him, the amounts spent from Public Exchequer to meet with the expenses of "Sadhbhavana Mission" would be between Rs.30 lac to Rs.100 crore. According to the petitioner, the exact amount spent from Public Exchequer can only be ascertained by respondent no.1 i.e. the Chief Secretary to the Government of Gujarat, and respondent no.2, Secretary, Finance Department of Government of Gujarat.

6. It is also the case of the petitioner that he applied through his advocate under the Right to Information Act and asked for the information from respondent no.2, Secretary, Finance Department but, he has been informed that it will not be possible for the department to provide such information as the information sought for does not fall within the ambit of Right to Information Act. It is also the case of the petitioner that he has reliably learnt from a news item reported in "Divya Bhaskar" dated 17th December 2011 that the State Government is not providing the requisite information even to Her Excellency, the Governor of Gujarat.

7. The main plank of petitioner's case appears to be that the "Sadhbhavana Mission" is nothing but purely one of the political agendas of a political party, and if, a political party for its vested interest declares some programme, then it is for the political party concerned to bear all the expenses which would be incurred for such a programme. In the present case, according to the petitioner, huge amount has been spent from the Public Exchequer and a programme like "Sadhbhavana Mission" has nothing to do with the administrative functioning of the State Government or for the welfare and development of the people of the State of Gujarat.

8. In the aforesaid background, this writ petition has been preferred in public interest substantially with a prayer that the action of the State Government in spending crores of rupees towards such programmes be declared as unconstitutional, illegal and arbitrary. The petitioner has also prayed for an appropriate order directing respondent no.1, Principal Secretary to the

Government of Gujarat to recover the entire amount paid to different agencies/ institutions and deposit the same with the Government treasury.

9. Record reveals that an identical petition for the same relief was preferred earlier being Writ Petition (PIL) No..119 of 2011. This petition was not pressed at the relevant point of time with a view to collect the information and approach the Court with a fresh petition. It appears that this order was passed taking into consideration Rule 3(d) of the High Court of Gujarat (Practice and Procedure for Public Interest Litigation) Rules, 2010, which provides that if the petition is based on newspaper report, then it must be specifically averred in the petition as to whether the petitioner has taken steps to verify the facts personally. We deem fit to quote the order dated 21st September 2011 passed by the Division Bench (Coram: Acting C.J. Mr. Justice A.L.Dave and Mr. Justice J.B.Pardiwala, J.):

1. Heard learned Advocate Ms. Ratna Vora for the petitioner. Learned Government Pleader Mr. P.K. Jani appears on service of an advance copy.

2. Attention of the learned Advocate Ms. .Vora was drawn from the beginning by this Court about the fact that the petition lacks in information regarding quantum of money involved and the basis of the allegation that the money is going to be spent out of public exchequer. She, however, relied on the newspaper reports only and insisted for the Court to take cognizance and call upon the other side. She submitted that let the other side come out with some explanation, if any.

3. Attention of Ms. .Vora was drawn towards the basic requirement for a Public Interest Litigation under Chapter-II Rule-3(d) of the High Court of Gujarat (Practice and Procedure for Public Interest Litigation) Rules, 2010 that if the petition is based on the news report, it must be stated whether the petitioner has taken steps to verify the facts personally. However, this aspect is missing in the petition.

4. Ms. .Vora also sought permission to amend the cause title of the petition and add the Executive Engineer, Road & Buildings, Guadalajara, Ahmedabad, as party respondent, as his name figures in one of the news.

5. It was indicated that the Court cannot act on some unverified newspaper report and the petition has to be founded on something more than that because it is a Public Interest Litigation.

6. At this stage, the learned Advocate Ms. .Vora does not press this petition with a view to collect the information and approach this Court with a fresh petition, if, the situation so requires. The petition thus stands disposed of as not pressed.

Contentions of Petitioner :

2. It has been vehemently contended by learned advocate Ms. .Ratna Vora appearing for the petitioner that no Government had a right to say that it will indulge in wasteful expenditure and any attempt to fritter away the State resources could be checked and should be checked by the Court, if moved in that

behalf. She would submit that the petitioner is a responsible citizen and is concerned with the wasteful expenditures indulged in by the Government in the name of programmes like "Sadhbhavana Mission" and, more particularly, when such programmes are politically motivated and only for the benefit and publicity of a political party. She would further submit that the Chief Minister and his Council of Ministers are trustees of public funds and, as such, they have the obligation to preserve the corpus and to avoid wasteful expenditure, more particularly, when the expenditure is not for the benefit of the subjects of this particular State and is only for political mileage. She would submit that this Court was not powerless to prevent such waste and squandering of public funds and when questioned, it is the duty of the Government to satisfy the Court that the expenses have not been borne from Public Exchequer but from the funds of the political party concerned.

3. She would further submit that public opinion in this regard is greatly agitated and wants to know as to where the truth lies. She submitted that this is a fit case where Court should interfere and call upon the respondents to explain as to how the money has been spent for the programme "Sadhbhavana Mission".

4. Thus, the question for our consideration in this petition in the nature of Public Interest Litigation is as to whether any public interest is involved and whether this Court, in exercise of powers under Article 226 of the Constitution of India, can entertain such a petition and grant reliefs as prayed for.

5. Ordinarily, court would allow litigation in public interest if it is found :

i. That the impugned action is violative of any of the rights enshrined in Part III of the Constitution of India and relief is sought for its enforcement;

ii. That the action complained of is palpably illegal or mala fide and affects the group of persons who are not in a position to protect their own interest on account of poverty, incapacity or ignorance;

iii. That the person or a group of persons were approaching the Court in public interest for redressal of public injury arising from the breach of public duty or from violation of some provision of the Constitutional law;

iv. That such person or group of persons is not a busy body of meddlesome inter-loper and have not approached with mala fide intention of vindicating their personal vengeance or grievance;

v. That the process of public interest litigation was not being abused by politicians or other busy bodies for political or unrelated objective. Every default on the part of the State or Public Authority being not justiciable in such litigation;

vi. That the litigation initiated in public interest was such that if not remedied or prevented would weaken the faith of the common man in the institution of the judiciary and the democratic set up of the country;

vii. That the State action was being tried to be covered under the carpet and

intended to be thrown out on technicalities;

viii. Public interest litigation may be initiated either upon a petition filed or on the basis of a letter or other information received but upon satisfaction that the information laid before the Court was of such a nature which required examination;

ix. That the person approaching the Court has come with clean hands, clean heart and clean objectives;

6. That before taking any action in public interest the Court must be satisfied that its forum was not being misused by any unscrupulous litigant, politicians, busy body or persons or groups with mala fide objective of either for vindication of their personal grievance or by resorting to black-mailing or considerations extraneous to public interest.

7. It is also the duty of the Court to ensure that the petitioner has not been setup by others and is nothing but a "name lender".

8. In the well-known pronouncement of the Supreme Court in the case of the Janata Dal Vs. H.S. Chowdhary and Others, , the Supreme Court in detail has explained Public Interest Litigation - Its origin and meaning. In paragraphs 48, 49, 50 and 51, it has been observed as under :-

48. The question, "what "PIL" means and is?" has been deeply surveyed, explored and explained not only by various judicial pronouncements in many countries, but also by eminent Judges, jurists, activist lawyers, outstanding scholars, journalists and social scientists etc. with a vast erudition. Basically the meaning of the words "Public Interest" is defined in the Oxford English Dictionary, 2nd Edition, Vol. XII as "the common well being.....also public welfare".

49. In Shrouds Judicial Dictionary, Vol. 4 (IV Edition), "public interest" is defined thus:

PUBLIC INTEREST (1) A matter of public or general interest "does not mean that which is interesting as gratifying curiosity or a love of information or -amusement but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected".

[per Cambell C.J., R. v. Bedfordshire, (1855) 24 LJQB 81 (84)].

50. In Black's Law Dictionary (Sixth Edition), "public interest" is defined as follows:

Public Interest - Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, State or national

government.....

51. The expression "litigation" means a legal action including all proceedings therein, initiated in a Court of Law with the purpose of enforcing a right or seeking a remedy. Therefore, lexically the expression "PIL" means a legal action initiated in a Court of Law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected. There is a host of decisions explaining the expression "PIL" in its wider connotation in the present day context in modern society, a few of which we will refer to in the appropriate part of this judgment."

9. Applying the aforesaid tests to the facts of the present case, this Court owes a duty to see as to whose cause the petitioner is promoting when a petition is filed to pursue a Public Interest Litigation? Whose fundamental or other rights, if any, have been infringed? Who is to be relieved against any wrong and injury caused to him for which he cannot come to this Court ? These are some of the vital questions which are to be answered to test maintainability of any petition which purports to be in "Public Interest " and for a "Public Cause".

10. We have noticed that the entire petition is based on newspaper reports. Petitioner has tried to rely upon some information which he has been able to gather under the Right to Information Act but, that is also too cryptic and not satisfactory.

11. However, the moot question is that even if we believe whatever has been alleged by the petitioner in his petition as true, whether we should interfere in exercise of our public interest jurisdiction under Article 226 of the Constitution of India or not.

12. It goes without saying that the Council of Ministers are only public trustees or trustees of public funds. They have, therefore, an obligation to ensure that the funds are expended in a proper manner and no amount is wasted and that public revenue is not frittered away.

13. Part XII of the Constitution deals with the finance of the Union and the States. It provides for sharing of the revenue between the Union and the States and also makes provisions for the expenditures and borrowings by the Union and the States. The Parliament and the State Legislatures are given power to enact laws regulating the financial activities of the Union and the States. Article 148 of the Constitution provides that there shall be a Comptroller and Auditor- General of India to be appointed by the President and under Article 149 of the Constitution, he has to perform such duties and exercise such power in relation to the accounts of the Union and the States and another authorities or Bodies, as may be prescribed. His reports relating to the accounts of the Union are to be submitted to the President who shall cause the same to be laid before each House of Parliament and his report relating to the accounts of a State is to be submitted to the Governor who shall cause them to be laid before the Legislature

of the State. Thus, the financial activities and its control are essentially entrusted to the Executive, subject to legislative control and subject to the checks imposed by audit of the accounts by the Comptroller and Auditor-General. It is in this background that the Court has to consider whether the Court can, and, if so to what extent, step into the arena to regulate public expenditure.

14. Undoubtedly, the C.A.G. is a key figure in a system of Parliamentary control of finance. He is empowered to carry out examinations (known as "value for money audit") into the economy, efficiency and effectiveness with which the departmental authorities or other bodies had used their resources in discharging their functions. It is his duty to see the sanctioned money had been used for the purposes for which it was intended. He is the final audit authority and is an impartial part of the machinery through which the legislature enforces regularity and economy in the administration of public finance. His duty is not merely of audit but also exercising control over Governments spending. He is supposed to control the expenditures with reference to the well settled principles of administration of finance. The task of ensuring that the expenditure conforms. to sanctions, is specifically placed in the hands of the C.A.G.

15. It is not possible or rather permissible for us to entertain this petition on the argument that public opinion is greatly agitated and people of State of Gujarat want to know as to where the truth lies. We do not deny that these questions may be of grave political interest to people at large. But then, the questions which may be of interest on a political plane are not necessarily within the ambit of the court's jurisdiction. The argument of counsel suffers from the inability to accept as was pointed out by Justice Frankfurter in *Charles W. Baker v. Joe C. Carr* 369 US 663 at 716, "that there is not under our Constitution a judicial remedy for every political mischief" and "In this situation, as in others of like natures, appeal for relief does not belong here. Appeal must be to an informed, civically militant electorate. In a democratic society like ours, relief must come through an aroused popular conscience that sears the conscience of the people's representatives.

16. At this stage, we would like to quote and rely on a decision of the Supreme Court in the case of *Common Cause (A Regd. Society) Vs. Union of India (UOI) and Others*, . In this case, the Apex Court was dealing with a Public Interest Litigation and has very succinctly explained the powers of the Court in taking over the functioning of the Legislature or Executive.

17. We rely on the observations made by the Supreme Court in paragraphs 47, 50, 54, 56, 57, 58, 59, 69 and 70 :

47. We have gone deep into the subject of Judicial activism and public interest litigation because it is often found that courts do not realize their own limits. Apart from the doctrine of separation of powers, courts must realize that there are many problems. before the country which courts cannot solve, however much they may like to. It is true that the expanded scope of Articles 14 and 21

which has been created by this Court in various judicial decisions e.g. Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , have given powerful tools in the hands of the Judiciary. However, these tools must be used with great circumspection and in exceptional cases and not as a routine manner. In particular, Article 21 of the Constitution must not be misused by the Courts to justify every kind of directive, or to grant every kind of claim of the petitioner. For instance, this Court has held that the right to life under Article 21 does not mean mere animal existence, but includes the right to live with dignity vide *Olga Tellis vs.*

50. The justification given for judicial activism is that the executive and legislature have failed in performing their functions. Even if this allegation is true, does it justify the judiciary in taking over the functions of the legislature or executive? In our opinion it does not, firstly because that would be in violation of the high constitutional principle of separation of powers between the three organs of the State, and secondly because the judiciary has neither the expertise nor the resources for this. If the legislature or executive are not functioning properly it is for the people to correct the defects by exercising their franchise properly in the next elections and voting for candidates who will fulfil their expectations, or by other lawful means e.g. peaceful demonstrations and agitations, but the remedy is surely not by the judiciary in taking over the functions of the other organs.

54. Moreover, if once the Courts take upon themselves the task of issuing ukases as to how administrative agencies should function, what is there to prevent them from issuing directions as to how the State Government or Central Government should administer the State and run the country? In our opinion such an approach would not only disturb the delicate balance of powers between the three wings of the State, it would also strike at the very basis of our democratic polity which postulates that the governance of the country should be carried on by the executive enjoying the confidence of the legislature which is answerable and accountable to the people at the time of elections. Such an approach would in our opinion result in judicial oligarchy dethroning democratic supremacy.

56. When other agencies or wings of the State overstep their constitutional limits, the aggrieved parties can always approach the courts and seek redress against such transgression. If, however, the court itself becomes guilty of such transgression, to which forum would the aggrieved party appeal? As the ancient Romans used to say "Who will guard the Praetorian guards?" The only check on the courts is its own self-restraint.

57. The worst result of judicial activism is unpredictability. Unless Judges exercise self-restraint, each Judge can become a law unto himself and issue directions according to his own personal fancies, which will create chaos.

58. It must be remembered that a Judge has to dispense justice according to the law and the Constitution. He cannot ask the other branches of the State to keep

within their constitutional limits if he exceeds his own.

59. As stated by A.G. Noorani in his article on "Judicial Activism vs. Judicial Restraint" (published in SPAN magazine of April/May, 1997 edition) :

Zeal leads Judges to enter areas with whose terrain they are not familiar; to order minutiae of administration without reckoning with the consequences of their orders. Judges have made orders not only how to run prisons but also hospitals, mental homes and schools to a degree which stuns the professional. In their judgments they draw on material which is untested and controversial and which they are ill-equipped to evaluate."

69. Unfortunately, the truth is that PILs are being entertained by many courts as a routine and the result is that the dockets of most of the superior courts are flooded with PILs, most of which are frivolous or for which the judiciary has no remedy. As stated in Dattaraj Nathuji Thaware's case (supra), public interest litigation has now-a-days largely become "publicity interest litigation", "private interest litigation", or "politics interest litigation" or the latest trend "paise income litigation". Much of P.I.L. is really blackmail.

70. Thus, Public Interest Litigation which was initially created as a useful judicial tool to help the poor and weaker section of society who could not afford to come to courts, has, in course of time, largely developed into an uncontrollable Frankenstein and a nuisance which is threatening to choke the dockets of the superior courts obstructing the hearing of the genuine and regular cases which have been waiting to be taken up for years together."

18. In light of the authoritative pronouncements of the Apex Court referred to above, we are fully convinced that this petition in the nature of a Public Interest Litigation deserves to be rejected summarily.

19. It appears from what we have been able to gather that "Sadhbhavana", as the name denotes, is a programme launched by the State Government in goodwill or good-faith. We may not strictly go by the meaning attached to the word "Sadhbhavana" but, it appears that under the programme, the Chief Minister of the State decided to visit different places all over the State and meet the people at large. It also appears that as a part of the programme, the people of different region within the State of Gujarat are being apprised of the work undertaken by the State Government according to their political manifesto it has undertaken and also to apprise the citizens as to what the State Government intends to do in future for the welfare of the people.

20. This Court is in no way concerned with the political ideology of a particular elected Government or its method of reaching the public at large to apprise them of different welfare schemes or projects undertaken by such Government. Assuming for the moment that under such a programme a State Government which is in power and is elected by the people to form a Government is indirectly canvassing solely in the interest of the political ideology to which it belongs, even

then, this Court, in exercise of its power under Article 226 of the Constitution of India, would not undertake judicial review of such a programme. This Court, however, would not hesitate to interfere if it finds that any act of the State Government has infringed any of the Constitutional rights or any other legal rights of a citizen of this State or the policy sought to be enforced is violative of any of the provisions of the Constitution. Here, the question is one relating to powers of the Government to spend money out of Public Exchequer for a set of purposes. Thus, the question really is one on the nature and extent of power of expenditure, scope and limit thereof and the ambit of judicial review.

21. We may only say that if any citizen of this State feels that a particular Government has not been able to fulfill its promises as made at the time of election through its political manifesto or has not been able to meet with the expectations of the people, then in that case, as held by the Supreme Court in the case of Common Cause (supra), it is for the people to correct the defects by exercising their franchise properly in the next elections and voting for candidates who will fulfill their expectations or by other lawful means like "Satyagraha" in a peaceful manner to arouse the conscience of the Government, but the remedy is surely not by approaching the judiciary and asking it to scrutinize the functions of the other organs. If this Court would take upon itself the task of issuing directions as to how the State Government should administer the State, then such an approach, as held by the Supreme Court, would not only disturb the delicate balance of powers between the three wings of the State but, would also strike at the very basis of our democratic polity which postulates that the governance of the State should be carried on by the Executive enjoying the confidence of the Legislature which is answerable and accountable to the people at the time of elections.

22. At this stage, it would not be out of place to state that though C.A.G. has been invested with vast powers, it is not entitled to question the merit of the policy objectives of the Government in power. Even C.A.G. does not have any authority or power to comment upon the policy decision taken by the State Government in formulating a project or a programme which, in its opinion, is in public interest unless such decision is expressly prohibited by any of the provisions of the Constitution.

23. Thus the nature of the reliefs sought for in this case do not enure to the benefit of any particular individual as they are general in nature. No rights of any individual are involved. An analysis of the submissions made on behalf of the petitioner will reveal that what is attacked is the scope of the power of expenditure by the State in a matter of this nature.

24. The earliest case in this regard was the one in Laxman Moreshwar Mahurkar Vs. Balkrishna Jagannath Kinikar and Others, . The Bombay High Court while dealing with this question and with specific reference to Art. 282 of the Constitution has stated as follows (at page 168) :

The powers of a State Government are much wider as would appear from Article 282 of the Constitution..... This provision confers a very wide discretion on a State Government. It is for the State Government to decide what is public purpose and what is not a public purpose..... If the Government purports to spend money for a purpose which it characterises as a public purpose though in point of fact it is not a public purpose, the proper place to criticise the action of the Government would be the legislature or the Appropriation Committee. The Courts are not the forum in which the Government's action could be sought to be criticised or restrained. Wide as the powers of the High Court are under Article 226 of the Constitution, they do not extend as far as the petitioner would like them to go. The business of governing the State is entrusted by the Constitution to the executive government. How to spend public monies is part of the executive functions of the Government and it is not permissible to the High Court to interfere with the powers of the Government in this respect. "

In *Bira Kishore Mohanty Vs. State of Orissa*, , it was noticed that:

It is for the State Government to decide what is a public purpose and what is not a public purpose. If the Government purports to spend money for a purpose which it characterises as a public purpose, though in point of fact it is not so, the proper place to criticise the action of the Government would be the Legislature or the Appropriation Committee. The Court shall not be the forum which Government's action can be criticised or restrained. The business of governing the State is entrusted by the Constitution to the executive Government. How to spend public monies is part of the executive functions of the Government and it is not permissible to the High Court to interfere with the powers of the Government in this respect under Article 226 of the Constitution."

25. Again this position was reiterated in *M.A. Ismail v. Alwaye Municipality*, reported in 1974 Tax LR 1659.

26. So far as the power of expenditure of the State is concerned, the scheme of the Constitution of India is that the power of the Union or a State Legislature is not limited to the legislative powers to incur expenditure only in respect of powers conferred upon it under the VII Schedule, but it can incur expenditure on any purpose not included within its legislature powers. However, that purpose must be public purpose. The position is elucidated in "Commentary on the Constitution of India" Volume 8 - Eight edition, at pages 9318, 9319 and 9320 by Basu in the following manner with reference to American Constitution on a provision similar to Article 282 of Constitution of India. We deem fit to quote Article 282 of the Constitution :-

282. Expenditure defrayable by the Union or a State out of its revenues.- The Union or a State may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws."

"It has been held that the above spending power is not restricted to the purposes

with respect to which Congress has legislative power delegated to it by the Constitution, but extends to any public purpose, provided it provides for the general welfare. This, however, does not mean that the "spending power" grants to Congress any legislative power to provide for "general welfare". It only enables Congress to spend the revenue for a purpose of general welfare even though that subject matter does not come within its legislative competence. For instance, it enables Congress to make grants and subsidies to State Governments for agriculture, irrigation or reclamation of land, education, unemployment, highways etc., which are outside the legislative powers delegated to Congress.

This power has also been availed of to make federal grants or loans direct to municipal or local bodies or agencies subordinate to the State, e.g., to promote construction of municipal public works, or to create a corporation authorised to use federal funds for financing private debtors throughout the nation. The power to make grants has been held to include the power to impose terms. and conditions as to expenditure of the moneys granted.

Courts have never sought to interfere with the Congressional determination of what is "general welfare". The result is, that once the money is collected by legitimate means, there is no judicial review over the distribution or spending of that money and Congress is free to make any law authorising expenditure for any purpose that appears to it to be conducive to the "general welfare". A taxpayer cannot question expenditure of the money raised by taxation on the ground that the expenditure will deplete the public funds and thus increase the burden of future taxation.

27. In the background of this analysis of the constitutional scheme on financial power of the State, we do not think this Court is competent to go into the question as to whether the expenditure incurred by the Government is for a public purpose or not, or whether it is wise or not. Our Constitution envisages that the executive is responsible to the legislature and every policy and action is subject to its scrutiny and that is in consonance with Westminster system of Parliamentary democracy. Judicial interference is permissible when the action of the Government is unconstitutional and not when such action is not wise or that the extent of expenditure is not for good of the State. All such questions must be thrashed out in the legislature and not in Courts. The complaint of the petitioner is in the nature of criticism of the Governmental expenditure and the wisdom thereof.

28. But, we are of the view that such an exercise can be done only in other forums. and in the manner and method as suggested by the Supreme Court in *Common Cause* (supra) and not before this Court. If such questions are allowed to be raised before court, every expenditure of the State can be called in question, both as to the nature and extent thereof, in which event the functioning of the Government itself will be hampered. In that view of the matter, we decline to entertain this petition. The same is rejected summarily. However,

on the facts and in the circumstances of the case, there shall be no order as to costs.