

(1999) 03 RAJ CK 0043

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2852 of 1998

Smt. Laxmi Kachhawaha

APPELLANT

Vs

The State and Others

RESPONDENT

Date of Decision : 15-03-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1999 Raj 254 : (1999) 2 RLW 864 : (1999) 3 WLC 508

Hon'ble Judges : V.S. Kokje, J;A.S. Godara, J

Bench : Division Bench

Advocate : K.N. Joshi, for the Appellant; L.R. Upadhayay, for the Respondent

Judgement

V.S. Kokje, J.—This petition is filed by a lady, Political and Social Worker, in public interest drawing attention of this Court to the malpractices and atrocities allegedly being committed by the bodies called caste panchayats on the weaker-sections of the concerned communities, especially on the woman members of the community. It has been averred in the petition that even these bodies called caste panchayats are not properly organised and constituted on principles of democratic representation and without any election, unruly elements in the community declare themselves as Panchas of the community and rule the community as such. It is alleged that without following any norms the community panchayats exercise powers of granting divorce, resolving legal disputes, imposing penalties and imposing punishments etc. There being no sanction of law behind the decisions given by such panchayats, the Panchas get their decisions executed by resorting to threats and muscle-power. It is also alleged by the petitioner that the community panchayats are forcibly dissolving legal marriages and granting illegal divorce to legally wedded couples. They harass the ladies of the community by following various unfair practices. Certain instances have also been cited in the petition of not only compelling females to consent to a divorce but also of imposing fines to the tune of Rs. 51000/-. Instances of compelling members of the community to give "Mrityubhoj" and

other such illegal activities have also been alleged in the petition. Some newspaper cuttings have also been annexed to the petition, The petitioner also approached the Chief Minister with a representation requesting proper and effective action against such illegal activities. According to the petitioner after waiting for a few days for Govt. to take some action, the petitioner ultimately filed the petition, in which the following reliefs have been prayed for :--

"By a writ of mandamus or any other appropriate writ, order or direction the non-petitioners be directed to legislate the law to restrain the activities of self-styled so-called Panchas.

The non-petitioners be directed to eradicate the social evil prevalent in Mali Community and other Communities where the persons are facing serious harassment and inconvenience on account of the activities of self-styled Panchas.

By an appropriate writ, order or direction, direction may be given to the Director General of Police as well as the Superintendent of Police, Jodhpur to take immediate action if any such complaint is received and restrain the so-called panchayat to hold any meeting.

In the alternative, by appropriate writ, order or direction in Indian Penal Code or Code of Criminal Procedure some provision may be incorporated to restrain the activities of self-styled Panchas and so-called Panchayats.

By an appropriate writ, order or direction the non-petitioners be directed to take serious actions against such persons who are involved in mentioning themselves and acting as self-styled Panchas.

Any other appropriate writ, order or direction, as may be deemed just and proper in the facts and circumstances of the case be issued.

Costs of the writ petition may kindly be ordered to be awarded in favour of the petitioner."

2. During the pendency of the petition an application for intervention has been moved by members of Nagori Telian Community supporting the original petition.

3. We have heard the learned counsel. This petition is an example of a well intentioned exercise in futility. The petitioner seems to have been inspired by the wide spread belief that a public interest litigation is a panacea for all evils including social evils. An impression has gained ground that Courts can do anything and everything on earth. Some audacious public interest litigants have come to believe and would like the Courts to believe that not only the Courts have unlimited powers to pass any kind of orders but they are also duty-bound to do so. We have the experience of some such petitions being argued in a manner which gives an unmistakable impression that public interest litigant has done his duty by putting the matter before the Court and it is the Court which would be failing in its duty if it does not accede to the request to intervene. Some such belligerent public interest litigants have gone to the extent of arguing

that social evils are persisting in the society and the public grievances are not being redressed because the Courts are not doing their duty to pass appropriate orders. Fortunately, the learned counsel appearing in this case did not make any such unreasonable requests but all the same expected this Court to do something according to its own light to remedy the wrong pointed out in the petition.

4. We do not believe that every social evil and every public wrong can be remedied by this Court by issuing writs. Many of the evils in the society are because of lack of education, lack of courage to fight against injustice and lack of will to sacrifice. Just like the State and its Police Force are unable to provide personal security to everyone against any bodily harm likely to be caused to him or to his property, the Courts, cannot provide cover to every citizen against all the wrongs done to him by other members of the society or unruly members of the society. Eradication of castes is a laudable purpose but that cannot be achieved by issuing writs. Citizens have a right to fight against injustices perpetrated upon them by any other citizens or class of citizens. If an individual approaches an appropriate Court with a grievance which the Court has jurisdiction to redress, no Court in India would turn him away. But the problem is that in the name of public interest litigation, citizens who are not sufferers themselves are asking the Courts to come to the rescue of a citizen who is suffering an injustice. Even this can be done by the Court in appropriate cases. But all such injustices cannot be stopped by the Court by issuing a general direction. Each case of atrocities or injustices will have to be brought to an appropriate forum by public spirited citizens or the victims themselves.

5. The grievances pointed out by the petitioner may be real but to redress them, specific complaints will have to be lodged and dealt with under a procedure established by law. If an offence under any Act has been committed, and most of the cases pointed out are surely offences under the general law, such offences have to be dealt with in accordance with the Code of Criminal Procedure. By giving a general declaration that all the Community Panchayats should stop working or they should stop perpetrating atrocities on the members would be a futile and inexecutable order. We are afraid many of the victims themselves would not come forward to set the process of law in motion against the big wigs of their community for variety of reasons. Even after 50 years of independence the caste prevails and has not been wiped out from the Indian Society. Even today more than 90% marriages are arranged marriages and they take place amongst the members of the same caste. There is a tendency amongst the members of the community to go together on many matters including exercise of their right to vote. Total eradication of castes is, therefore, yet a distant dream. In such an atmosphere, howsoever, laudable the intention of the petitioner may be, it would be futile to issue any order generally declaring an activity to be illegal and prohibited it. After all there is no legal compulsion to be or to continue to be a member of the caste. If there are social compulsions to do so, this Court cannot help. If any offence is committed by leaders of the caste, normal

redressal procedure has to be followed. 6. We would, however, expect that the State Govt. which was approached by the petitioner with a representation would do its best in taking steps to prevent the total abuse of social authority the Caste Panchayats exercise over the members of the caste and take care that the Caste Panchayats do not get away with blatant violation of fundamental rights of the members of the community or their legal rights. This is all which we can do in this case. The petition is disposed of.