

Narmada Bachao Andolan

Vs

Union of India

IA No. 14 of 1999 in Writ Petition (C) No. 319 of 1994

(CJI Dr. A.S. Anand, S.P. Bharucha, B.N. Kirpal JJ)

15.10.1999

JUDGMENT

CJI Dr. A.S. ANAND:-

1. This petition has been filed by the State of Gujarat bringing to the notice of the Court how the petitioner – Narmada Bachao Andolan – had been reacting to the interim order of this Court permitting the increase of the height of the dam to RL 85 metres and about the threats of protests, public meetings and of undertaking satyagrahas etc. on account of that order. Reference is made particularly to the interview of Ms Medha Patkar which appeared in *The Hindustan Times* of 27-06-1999 and some other newspaper reports and press releases issued by the petitioner. Our attention has also been drawn to an article which appeared in the weekly news magazine Outlook and to some portions of a book titled *The Greater Common Good by Ms Arundhati Roy*.

2. On 22-7-1999, we made the following order:

At the outset, our attention has been drawn to certain statements, press release, interviews, etc, given by the petitioner themselves or by some others under the agents of the petitioner – Narmada Bachao Andolan, copies of some of those statements, etc, have been filed along with IA No. 14 by the State of Gujarat.

Our attention has also been drawn to an article in the weekly news magazine outlook dated 24.5.1999 under the title/. "The Greater Common Good" by Ms Arundhati Roy. A book under the same title i.e., *The Greater Common Good by Arundhati Roi*, which appears to have been dedicated to ‘The Narmada, and all the life she sustains and

Shripad, Nandini, Syslvic, Alok, Medha, Baba Amte and their colleagues in the NBA’, has also been brought to out notice.

We have gone through the statements, the press releases, the article and certain portions of the book referred to above. Prima facie, it appears to us that there is a deliberate attempt to undermine the dignity of the court and to influence the course of justice. These writings, which present a rather one-sided and distorted picture have appeared in spite of our earlier directions restraining the parties from going to the press, etc. during the pendency of the proceedings in this Court.

However, before we decide to proceed any further, we consider it proper to appoint

an amicus to advise the Court about the action, if any, which is required to be taken in this respect as also in respect of the writ petition itself.

We request Mr.K.K.Venugopal, Senior Advocate, President of then Supreme Court Bar Association, to act as amicus and advise the Court.

3. After hearing learned amicus as well as other learned counsel appearing in the case, who all rose above the case of their clients to assist to Court, we are of the opinion that the petitioner NBA and its leader Ms.Medha Patkar have knowingly made comments on pending proceedings and have prima facts disobeyed the interim injunctions issued by this Court on 11.4.1997 and 5.11.1998. Prima Facte the threats held out by the petitioners and its leaders also appears to be an attempt to prejudice or interfere with the due course of judicial proceedings. Litigants must realise the courts cannot be forced by pressure tactics to decide pending cases in the manner in which the party concerned desires. It will be a negation of the rule of law if the courts were to act under such pressure.

4. Some of the objectionable passages in the book, *The Greater Common Good* by Ms.Arundhati Roy are as follows:

"I stood on a hill and laughed our loud.

In had crossed the Narmada by boat from Jalsidhi and climbed the headland on the opposite bank from where I could see, ranged across the crowns of low, bald hills, the tribal hamlets of Sikka, Surung, Neemgavan and Domkhedi. I could see their airy, fragile homes, I could see their fields and the forests behind them. I could see little children with littler goats scutting across the landscape like motorised peanuts. I knew I was looking at a civilisation older than hinduism, stated ____ sanctioned (by the highest court in the land) --- to be drowned this monsoon when the waters of the Sardar Sarover reservoir will rise to submerge it.

What did I laugh?

Because I suddenly remembered the tender concern with which the Supreme Court Judges in Delhi (before vacating the legal stay on further construction of the Sardar Sarovar dam) had enquired whether tribal children in the resettlement colonies would have children's park to pay in. The lawyers representing the Government had hastened to assure them that indeed they would and what's more, that there were seesaws and slides and swings in every part. I looked up at the endless sky and down at the river rushing past and for a brief, brief moment the absurdity of it all reversed my rage and I laughed. I meant on disrespect.

Who owns this land? Who owns its rivers? Its forests? Its fish? These are huge questions. They are being taken hugely seriously by the state. They are being answered in one voice by every institution at its command --- the army, the police, the bureaucracy, the courts. And not just answered, but answered unambiguously, in bitterm brutally ways.

Accordingly to the Land Acquisition Act of 1894 (amended in 1984) the Government is not legally bound to provide a displaced person anything but a cash compensation. Imagine that. A cash compensation, to be paid by an Indian Government official to

an illiterate tribal man (the women get nothing) in a land where ever the postman demands a tip for a delivery! Most tribal people have no formal title to their land and therefore cannot claim compensation anyway. Most tribal people – or let's say most small farmers – have as much use for money as a Supreme Court Judge has for a bag of fertiliser".

5. Ms. Arundhati Roy is not a party to the proceedings pending in this Court. She has, however, made comments on matters connected with the case being fully alive to the pendency of the proceedings in this Court. The comments made by her are prima facie a misrepresentation of the proceedings in this Court. Judicial process and institution cannot be permitted to be scandalised or subjected to contumacious violation in such a blatant manner in which it has been done by her.

6. While hypersensitivity and peevishness have no place in judicial proceedings – vicious stultification and vulgar debunking cannot be permitted to pollute the stream of justice. Indeed under our constitution there are positive values like right to life, freedom of speech and expression but freedom of speech and expression does not include freedom to distort orders of the court and present incomplete and a one-sided picture deliberately, which has the tendency to scandalise the court. Whatever may be the motive of Ms. Arundhati Roy, it is quite obvious that she decided to use her literary fame by misinforming the public and projecting in a totally incorrect manner, how the proceedings relating to resettlement and rehabilitation had shaped in this Court and distorting various directions given by the Court during the last about 5 years. The writings referred to above have the tendency to create prejudice against this Court. She seems to be wholly ignorant of the task of the Court. The manner in which she has given a twist to the proceedings and orders of the Court is in had taste and not expected from any citizen, to say the least.

7. We wish to emphasise that under the cover of freedom of speech and expression no party can be given a licence to misrepresent the proceedings and orders of the court and deliberately paint an absolutely wrong and incomplete picture which has the tendency to scandalise the court and bring it into disrepute or ridicule. The right of criticizing, in good faith in private or public, a judgment of the court cannot be exercised, with malice or by attempting to impair the administration of justice. Indeed, freedom of speech and expression is the "lifeblood of democracy" but this freedom is subject to certain qualifications. An offence of scandalising the court per se is one such qualification, since that offence exists to protect the administration of justice and is reasonably justified and necessary in democratic society. It is not only an offence under the Contempt of Court Act but is sui generis. Courts are not unduly sensitive to fair comment or even outspoken comments being made regarding their judgements and orders made objectively, fairly and without any malice, but no one can be permitted to distort orders of the court and deliberately give a slant to its proceedings, which have the tendency to scandalise the court or bring it to ridicule, in the larger interest of protecting administrations of justice.

8. The action of the petitioner and its leaders Ms. Medha Patkar as well as writings of Ms. Arundhati Roy have caused us much anguish and when we express our displeasure of the action of Ms. Arundhati Roy in making distorted writing or the manner in which the leaders of the petitioner Ms. Medha Patkar and Mr. Dharmadhikari have, after given assurance to this court, acted in breach of the injunctions, we do so out of anguish and not out of anger. May be the parties were overzealous in projecting their point of view on a matter involving a large segment of tribal population, but they should not have given to themselves the liberty of acting in the objectionable manner as already noticed. We are unhappy at the way the leaders of NBA and Ms. Arundhati Roy have attempted to undermine the dignity of the Court. We expected better behavior from them.

9. After giving this matter our thoughtful consideration and keeping in view the importance of the issue of resettlement and rehabilitation of the PAF's, which we have been monitoring for the last five years, we are not inclined to initiate contempt proceedings against the petitioner, its leaders or Ms. Arundhati Roy. We are of the opinion, in the larger interest of the issues pending before us, that we need not pursue the matter any further. We, however, hope that what we have said above would serve the purpose and the petitioner and its leaders would hereafter desists from acting in a manner which has the tendency to interfere with the due administration of justice or which has the tendency to interfere with the due administration of justice or which violates the injunctions issued by the Court from time to time.

10. After 27-7-1999 when learned amicus was appointed, nothing was come to our notice which may show that Ms. Arundhati Roy has continued with her objectionable writings insofar as the judiciary is concerned. She may have by now realised her mistake. We, therefore, consider it appropriate to now let the matter rest here and not to pursue it may further. The application (IA No.14) is accordingly disposed of.

11. Before parting with this order we wish to place on record our deep appreciation for the assistance rendered to us by the amicus, Shri. K. K. Venugopal, Senior Advocate and all other learned counsel appearing in the case.

12. Let the main writ petition be now placed for directions on *4-11-1999 at 2 p.m.*

BHARUCHA, J –

While I record my disapproval of the statements that are complained of, I am not inclined to take action in contempt against Medha Patkar, Shripad Dharmadhikari and Arundhati Roy because the Court's shoulders are broad enough to shrug off their comments and because the focus should not shift from the resettlement and rehabilitation of the oustees.

14. I acknowledge with gratitude the assistance rendered to the Court by the learned amicus curise and by learned counsel for the parties.

15. The IA (No.14) is, accordingly, disposed of.

Narmada Bachao Andolan

Vs

Union of India and Others

Writ Petition (C) No.319 of 1994 with WP (C) No.345 of 1994, SLP (C)

No.3608 of 1985, CA No.6014 of 1994, WP (C) No.104 of 1997 and

TC (C) No.35 of 1995

(CJI Dr. A. S. Anand, B. N. Kirpal JJ)

22.07.1999

ORDER

1. By our order dated 07-05-1999, we had directed this case, along with the suit filed by the State of Madhya Pradesh, to be put up for directions and orders today and that, in case the Bench was not sitting, it would be specially constituted. This Bench has now been specially constituted for these case by order of the Chief Justice.
2. At the outset, our attention has been drawn to certain statements, press release, interviews, etc. given by the petitioners themselves or by some others under the aegis of the petitioners – Narmada Bachao Andolan. Copies of some of those statements, etc. have been filed along with IA No.14 by the State of Gujarat.
3. Our attention has also been drawn to an article in the weekly news magazine *outlook* dated 24-5-1-1999 under the title i.e.. *The Greater Common Good* by Arundhati Roy, which appears to have been dedicated to "The Narmada, and all the life she sustains and Shripad, Mandini, Sylvie, Alok, Medha, Baba Amte and their colleagues in the NBA", has also been brought to our notice.
4. We have gone through the statements,. The press release, the article and certain portions of the book referred to above. Prima facts,. It appears to us that there is a deliberate attempt to undermine the dignity of the Court and in influence the course of justice. These writings, which present a rather one sided and distorted picture have appeared in spite of our earlier directions restraining the parties from going to the press, etc. during the pendency of the proceedings in this Court.
5. However, before we decide to proceed any further, we consider it proper to appoint an amicus to advise the Court Bar Association to act as amicus and advise the Court Copies of various documents and statements, including the copies of the article from *Outlook* magazine and the book referred to above, shall be sent by the Registry to Mr.Venugopal forthwith. The matter shall be taken up on 29-07-1999 at 2.00 p.m. for further proceedings.
7. A supplementary report, dated 18-07-1999, regarding R&R measures taken by the Grievance Redressal Authority between May 1999 and July 1999 has been filed in the Court. It is taken on record.