

WRIT PETITION NO. 42/2002.

1. Gomantak Bahujansamaj Parishad  
a registered society, repre-  
sented by its President  
Shri Gajendranath Usgaonkar,  
having its office at 20th  
January, Altinho, Panaji, Goa.
2. Shri Babu Kondo Zore,  
son of Kondo Zore, President  
of Goa Dhanger Samaj Seva Sangh,  
Satari, having his office at  
Bhuipal, Satari, Goa. ... Petitioners.

VERSUS

1. State of Goa,  
represented by the Chief  
Secretary, Government of  
Goa, having his office at  
Secretariat, Panaji, Goa.
2. Director,  
Directorate of Panchayat,  
Government of Goa, having  
its office at Junta House  
Panaji, Goa.
3. The Mamlatdar cum Revenue  
Recovery Court, Taluka of  
Sattari, Valpoi, Goa.
4. The District Recovery  
Officer, North Goa District,  
Office of the Collector of  
North Goa District, Panaji, Goa.
5. The Block Development Officer,  
Sattari Taluka, Valpoi, Goa. ... Respondents.

Mr. D.P. Bhise, Advocate for the Petitioners.

Mr. V.P. Thali, Addl. Advocate General with Ms. S. Linhares,  
Addl. Government Advocate for the Respondents.

**CORAM: V. C. DAGA &  
P. V. HARDAS, JJ.**

**DATE: 24TH JUNE, 2002.**

ORAL ORDER: (PER V.C. DAGA, J.)

This petition challenges the Circular No.24/138/DP/2000 dated 24.08.2000 directing recovery of the amount of Loan granted under Village Housing Programme Scheme, 1968 (The Scheme of 1968 for short) with fixed interest in the sum of Rs.1000/-. The petitioners are also seeking a declaration that Section 2(g) (vi) of the Goa Daman and Diu Debt Relief Act 1981 (The Debt Relief Act for short) be declared null and void being discriminatory and violative of Article 14 of the Constitution of India and consequent declaration that their debt stands discharged under Section 4 of the said Debt Relief Act.

THE FACTS

2. The facts leading to the present petition in a nutshell are as under :-

3. The petitioner No.1 is a registered society representing the other backward Class Community of the State of Goa. Petitioner No.2 was one of the 'shelterless' persons who obtained loan of Rs.5000/- in one of the Schemes floated by the State Government known as The Scheme of 1968 to implement 20 point programme sponsored by the then Central Government. He

borrowed loan alongwith other members of 'Dhanger' and 'Gauda' community. He also claims to be the President of Goa Dhanger Samaj Seva Sangh, a body of the Danger Community which is notified as OBCs by the State and Central Government.

4. The petitioners state that the petitioner no.2 and such other similarly circumstanced persons were granted Government land admeasuring 100 sq. metres free of occupancy price for the purpose of construction of houses by the then Collector of Goa on 22nd March, 1982 and the said amount of loan in their perspective was non-recoverable.

5. It appears that consequent upon failure on the part of the petitioner no.2 to repay the instalments, action for recovery came to be initiated under Rule 17 of the Goa Daman and Diu Realisation of Land Revenue Rules 1968 so as to effect recovery of the principal of Rs.5000/- plus interest in the sum of Rs.750/- in terms of Section 11(c) of Village Housing Programme Scheme 1968. This action of recovery is a subject matter of challenge in the petition at the instance of the petitioner no.1 Society and the second petitioner who is one of the borrowers.

6. The petitioners, as stated hereinabove,

have also challenged the legality and validity of Section 2(g)(vi) of the Debt Relief Act being violative of Art.14 of the Constitution of India whereunder the word ' debt ' has been defined.

THE SUBMISSIONS.

7. The learned counsel for the petitioners submitted that it was made clear to them at the time of payment of the amount of Loan that it was a bounty under 20 point programme and thus loan amount would not be recovered from them. The petitioners submit that had it been made known to them that this amount is going to be recovered from them in future, they would not have borrowed this amount of Loan and would not have incurred obligation to repay with interest.

8. The learned counsel for the petitioners further submitted that Petitioner No.2 and similarly circumstanced persons acted to their prejudice by acting upon the representation made to them by the respondents and borrowed amount of Loan. Now it is not open for the respondents to turn around and affect recovery thereof.

9. It is further submitted that the definition of the word 'Debt' includes all liabilities

owing to creditors in cash or in kind, secured or unsecured, payable under decree of the Order of a Civil Court or otherwise whether due or not due, but, does not include any debt due to Central Government or any State Government or administration or Government of Union Territory or any local authority or Cooperative Society with other categories mentioned therein. According to the petitioners the exclusion of debt due to the Central Government or State Government or Administration of the Union Territory and of the Cooperative Society from the purview of the Act is arbitrary for want of reasonable nexus with the objects sought to be achieved. In the submission of the petitioners the said classification is arbitrary, and, therefore, the exclusion of the said debt from the definition of 'debt' is liable to be struck down holding it to be unconstitutional being violative of Article 14. As a sequiter of this challenge, further submission is that if clause (vi) which excludes the debt due to the Government agencies is declared to be unconstitutional and brought under the purview of the said Act and the scope and operation of Section 4 of the said Debt Relief Act then such debt will have to be treated as discharged, consequently, no recovery can be made from the petitioner no.2 or similarly circumstanced persons.

CONSIDERATION.

10. Having heard the parties at length, let us first consider the validity of Section 2(g)(vi) of the Debt Relief Act, 1968 as the fate of this petition depends upon the validity of the said Section. It is needless to mention that while considering the constitutional validity of a statute said to be violative of Art. 14, it is necessary to bear in mind certain well established principles which have been evolved by the Courts as rules of guidance in its constitutional function of judicial review. The first rule is that there is always a presumption in favour of the constitutionality of a statute and the burden is upon the person who attacks it to show that there has been a clear transgression of the constitutional principles. Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such a freedom of speech, religion etc. as held by the Apex Court in the case of **R.K. Garg v. Union of India**, A.I.R. 1981 S.C., 2138.

11. When a law is challenged as violative of Art.14, it is necessary in the first place to ascertain the policy underlying the statute and the object intended to be achieved by it. Having ascertained the

policy and object of the Act, the Court has to apply a dual test in examining its validity (i) whether the classification is rational and based upon an intelligible differentia which distinguished person or things that are grouped together from others that are left out of the group and (ii) whether the basis of differentiation has any rational nexus or relation with its avowed policy and object as held by the Apex Court in the case of **Harahchand vs. Union of India**, A.I.R. 1970 S.C., 1453.

12. Classification must be truly founded on substantial differences which distinguish persons grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved. Judicial scrutiny can therefore extend only to the consideration whether the classification rests on a reasonable basis and whether it bears nexus with the object in view. It cannot extend to embarking upon a nice or mathematical evaluation of the basis of classification, or were such an inquiry permissible it would be open to the courts to substitute their own judgment for that of the legislature or the rule-making authority on the need to classify or the desirability of achieving a particular object.

13. The Apex Court in the case of **Ramkrishna Dalmia vs. Justice S.R. Tendolkar**, A.I.R. 1958 S.C., 538 held that Art. 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. The Supreme Court ruled as under :-

(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself.

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that laws are directed to problems made manifest by experience and that discriminations by the Legislature are based on adequate grounds;

(d) that the Legislature may confine its restrictions to those cases where the need is deemed to



be the clearest;

(e) that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.

14. The legislature enacted the impugned legislation for the achievement of a particular object and purpose. It is for the Legislature to determine what categories it would embrace within the scope of legislation and merely because certain categories which would stand on the same footing as those which are covered by the legislation are left out would not render legislation which has been enacted in any manner discriminatory and violative of the fundamental right guaranteed under the Constitution.

THE FINDINGS.

15. The submissions made by the petitioners to challenge the validity of Section 2(g)(vi) of the Debt Relief Act if examined in the light of the above principles laid down by the Apex Court, it is not possible to agree with the petitioners that the provisions of Section 2(g)(vi) of the said Act is in any way violation of Art.14 of the Constitution. The object of the said Debt Relief Act is to provide relief from the indebtedness to agricultural labourers, rural artisans, marginal farmers and small farmers in the Union Territory of Goa, Daman and Diu (now State of Goa) from the loans and liabilities referred to Section 2(g)(vi). The classification made by the legislature with respect to the debts other than the debts due to the Central Government, State Government or administration of the Union Territory or any other local authority or cooperative society can be regarded a reasonable classification having nexus to the object of the act sought to be achieved.

16. The petitioners having borrowed the amount of loan with open eyes and having executed a deed of mortgage with full knowledge that the amount of loan facility extended by the Government, is repayable in instalments, it is not, in our opinion, open to the

petitioners to turn around and contend that the loan was not recoverable from them. No material particulars are to be found in the petition as to who made representation to the petitioners that the amount of loan shall be non-recoverable. For want of material fact and particulars of such alleged representation, the contention advanced on behalf of the petitioners cannot be accepted. The petitioners having opted to borrow loan from the Government and after having executed deed of mortgage to secure repayment thereof, the petitioners are now estopped from contending contrary to what is stated in the loan documents namely mortgage deed.

17. In the result, the petition is devoid of any substance and the same is dismissed in limine with no order as to costs.

( V. C. DAGA )  
JUDGE.

( P. V. HARDAS )  
JUDGE.

s1.