

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5169 of 2004

With

CIVIL APPLICATION NO.2495 OF 2006 IN
SPECIAL CIVIL APPLICATION NO. 5169 OF 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
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- 5 Whether it is to be circulated to the civil judge ?

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GRAM VIKAS SEVA TRUST - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR BP GUPTA for Petitioner(s) : 1,
MS ARCHANA RAVAL, A.G.P. for Respondent(s) : 1, 3,
MR HS MUNSHAW for Respondent(s) : 2,
RULE SERVED BY DS for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 31/03/2006

ORAL JUDGMENT

1. The present petition has been preferred against the arbitrary action of the Respondent - Authorities in cancelling the allotment of the Watershed Project to the petitioner vide order dated 12.2.2004 (Annexure 'C' to the memo of the

petition).

2. Learned Senior Advocate Mr. Yatin Oza appearing for the petitioner mainly submitted that the Respondent - Authorities, on the basis of recommendation (recommendation of the Committee is at Annexure 'B' to the memo of the petition) vide Resolution No.5 of District Watershed Development Committee dated 2.2.2002, selected the petitioner for District Watershed Development. Considering the experience of the petitioner, the qualification of the petitioner and the capacity of the petitioner, the petitioner was selected along with eight other Institutions for the Watershed Project at Taluka Radhanpur. It is also submitted by Senior Counsel for the petitioner that it is the Committee known as District Watershed Development Committee which is appointed as per the guidelines issued by the Central Government, Ministry of Rural Development, Department of Land Resources for Watershed Development has selected the petitioner along with eight other institutions. There are more than ten members of the said Committee which includes the Chairman of Respondent No.2 and also the Chairman of District Panchayat and several other persons. Thus, it was the Committee which

is constituted under the guidelines of the Central Government selected the petitioner as per Annexure 'B' to the memo of the petition for Watershed Project at Taluka Radhanpur. Along with the petitioner, other eight Institutions were also selected. All were given the work by the Respondent - Authorities, but the petitioner was not entrusted any work despite the recommendation by the Committee as per the guidelines of the Central Government. The present Project of Watershed is being 75% funded from the Central Government and remaining 25% is from the contribution of the State Government. The said recommendation by the Committee is vide Resolution No.5 of 2.2.2002. Thereafter, for the reasons best known to the respondents, no work was allotted and surprisingly in the year 2004, a letter dated 29th January 2004 was received from Deputy Conservator of Forest, Rural Development, State of Gujarat, Gandhinagar (Annexure 'B' of the affidavit-in-reply of respondent no.2) to the effect that two Watershed Projects are taken away from the petitioner. The allotment has been cancelled and they have been given the Gujarat State Rural Development Corporation Limited. It appears that this decision was based upon some report given by the District Rural Development

Agency, Ahmedabad. It is vehemently submitted by learned Senior Advocate Mr. Oza that no such report was ever supplied to the petitioner. What is assessed by the Committee under the policy of Central Government, cannot be brushed aside by the private report obtained by the respondent which was never disclosed to the petitioner till filing of the petition. Who obtained that report and what was the reason for obtaining the report, after the recommendation by the Committee, is also not coming forth on record. The petitioner is having experience of doing such type of work. To that effect, the learned advocate for the petitioner has taken this Court as Annexure 'A'. Considering this qualifications of the petitioner, petitioner was recommended by the Committee which has been cancelled after a long gap of two years and that too based upon a report which is never disclosed to the petitioner. Thus, there is a clear arbitrariness on the part of the Respondent - Authorities and there is also a breach of principles of natural justice. The decision, taken by the respondents for cancellation of grant of two Watershed Projects, is not based upon any report given by the Committee itself. Even on today, the recommendation of the Committee, dated 2.2.2002

vide Resolution No.5, is valid. It is also submitted by the learned Senior Advocate Mr. Oza appearing for the petitioner that the subsequent policy dated 7.3.2005 which is placed on record along with the reply filed by the respondent no.2 is not applicable to the petitioner as the petitioner was allotted Watershed Project in the year 2002. Thereafter some private report was obtained from District Rural Development Agency, Ahmedabad and the petitioner's Watershed Project was cancelled on 29.1.2004 and thereafter, the so called new policy has come in operation on 7th March 2005. It is also submitted that assuming without admitting that this new policy is applicable, then also it never oust the claim of the petitioner as Non-Governmental Agencies looking to the second paragraph of Point No.5 of the said policy. On the contrary, as per the Point No.5 of the policy especially second paragraph thereof, the private Institutions are allowed to carry on Watershed Projects, but it has been made conditional. Thus, even if the new policy came in force after three years of allotment of the Watershed Project to the petitioner is not totally discard the claim of the petitioner. It is, therefore, submitted by the learned Senior Advocate appearing for the

petitioner that the impugned recommendation dated 12.2.2004 deserves to be quashed and set aside and the order dated 25.2.2002, whereby the petitioner was communicated by the committee for the allotment of the two Watershed Projects at Taluka Radhanpur, ought to be implemented by the respondents.

3. I have heard the learned counsel appearing for the respondent no.2 who have submitted that the action initiated by the respondent is true, correct and legal and in consonance with the facts of the case. It is submitted that now there is a change in policy by the respondents. Only the Governmental Institutions will be given the work of Watershed Project. More over, there is an adverse report against the petitioner given by District Rural Development Agency, Ahmedabad. This was referred in the letter dated 29th January 2004 (Annexure 'B' of the affidavit-in-reply filed by the respondent no.2) and therefore, the two Projects have been handed over to the Gujarat State Rural Development Corporation Limited, Patan. Learned Counsel for the respondent no.2 has also pointed out the new policy dated 7.3.2005 and has relied upon Point No.5 of the said policy and has pointed out that the first

priority is to be given to Taluka Panchayat, thereafter to District Panchayat and thereafter the Government Institutions and if, they are unable to carry out the Watershed Project then only the Non-Governmental Agencies can be considered by the prior permission of the Central Government and therefore, the actions initiated by the respondents may not be interfered with by this Court.

4. I have heard the learned Counsel appearing for the respondent no.1 who has submitted that the actions of the respondents is true and correct. The same is based upon the report obtained by the Respondent - Authorities. The cancellation of the Project given to the petitioner is not arbitrary. But now, as per new policy, the work of Government shall be carried out by the Governmental Agencies and therefore, the actions initiated by the respondents may not be interfered with.

5. Having heard the learned Counsel of both the sides and looking to the facts and circumstances of the case, I hereby quashed and set aside the communication issued by the respondents dated 12.2.2004 (Annexure 'C' to the affidavit-in-reply

filed by the respondent no.2) mainly for the following reason :

(i) As per the guidelines issued by the Central Government, Ministry of Rural Development Department and Land Resources, for Watershed Development (Revised - 2001) as per Clause 21, there is a Committee which is constituted for the selection of the agencies for carrying out Watershed Project. The said Committee is known as District Watershed Development Committee. The relevant part thereof reads as under :

Clause-21 : "To ensure coordination at district level, a District Watershed Committee shall be constituted under the Chairman, Zilla Parishad of DRDA as the case may be. It shall consist of CEO/PD, ZP/DRDA and district level officers of the line departments associated with the implementation of Watershed Development Projects, one representative of the State Remote Sensing Centre, one member from the relevant Research and Training

institutions in the district, one NGO representative, at least two prominent women workers and one prominent social worker. The District Watershed Development Committee will advise and assist the ZP/DRDA on matters, training, community of organisation, publicity campaigns and such other Watershed development Project in the district. It should meet at least once in a quarter and review the progress of the Watershed Development Projects, assist in resolving management and administrative problems, guide in implementation, identify policy issues, if any, for reference to the State Government / Government of India."

The said Committee includes the Chairman of respondent no.2. The Committee resolved dated 2.2.2003 Resolution No.5 (Annexure 'B' to the memo of the petition) whereby several agencies were selected for carried out Watershed Project at different Talukas. One of them is present petitioner. As per this

Resolution by the Committee, petitioner has been entrusted two Watershed Projects at Taluka Radhanpur. This Committee is working even on today. The Committee has not been dissolved by any of the Resolutions. Even as per new policy, even on today, Non-Governmental Agencies are eligible for carrying out Watershed Projects. It is not the case of the respondents that Non-Governmental Agencies are disqualified. The said Resolution is also valid even on today.

(ii) Despite this Resolution of the early part of Year-2002, for the reasons best known to the respondents, no work was given to the petitioner whereas rest of the eight Institutions which were selected by the very same Committee through the very same Resolution were already entrusted the work.

(iii) For some unknown reasons, the respondent tried to come out from this Resolution of the Committee which is constituted under the guidelines given by the Central Government and has tried to obtain privately some report. What was the need of getting such report is not coming forth on

record by the respondent, after getting the Resolution being passed by the Committee. Secretly obtained report is relied upon by the respondents, never before the copy whereof was given to the petitioner till filing of the petition. On the basis of such secret report, the evaluation made by the Committee is, so diluted, that what is awarded by the Committee viz., the two Watershed Projects have been taken away vide letter dated 29.1.2004 (Annexure 'B' to the affidavit-in-reply filed by the respondent no.2). It appears from the facts of the case that this privately obtained report played a pivotal role and has given birth to the present petition. Prima facie, the action of the respondent is bad in law and violative of principles of natural justice and therefore, is arbitrary. Equality and arbitrariness are sworn enemies of each other. If equality is present, arbitrariness ought to be absent and when arbitrariness is present, equality will be absent. In the facts of the present case, this communication dated 29.1.2004 written by Deputy Conservator of Forest, Rural Development, State of Gujarat, Gandhinagar (Annexure 'B' to the affidavit-in-reply of

respondent no.2) is violative of principles of natural justice and is arbitrary and therefore, violative of Article 14 of the Constitution of India. If such decision is allowed, it will lead to a pick and choose method. In the facts of the present case, the rest of the eight Agencies selected by the Committee (which is constituted under the Central Government Policy) has been allotted the work whereas petitioner has been excluded. The result of arbitrariness is always the discrimination.

(iv) Learned Counsel appearing for the respondents viz., for the respondent no.1 as well as for the respondent no.2 have vehemently relied upon the new policy which is latest in point of time i.e. Resolution dated 7.3.2005 and brought to the notice of this Court from Clause No.5 that the petitioner has last priority whereas first priority of grant of work of Watershed Project is to Taluka Panchayat then to District Panchayat then to Government Institutions and if they are unable to do the work or if they are not willing to do the work then only the Non-Governmental

Institutions can be given the work by getting prior permission of the Central Government. This Court is not accepting this argument mainly for the reasons that always the Court is considering the grievance as prevailing on the date on which the dispute has arisen. The petitioner is ventilating the grievance against the arbitrary decision taken by the Authorities vide letter dated 12.2.2004 and arbitrary decision taken by respondent authority vide letter dated 29.1.2004 on the basis of privately obtained report. What is assessed and evaluated by the Committee vide its Resolution No.5 dated 2.2.2002 has been brushed aside and that not only the Projects have been taken away but attaches stigma to the petitioner's Institution. Before arriving at such a conclusion, the petitioner ought to have been heard and the bare minimum requirement is to supply the copy of such report to the petitioner. Thus, from both the angles that is for want of hearing and for want of supply of the documents on which reliance is placed by the respondent for canceling the Watershed Project entrusted to the petitioner the decision taken by respondents vide their letter dated 12.2.2004

deserves to be quashed and set aside. The new Resolutions and new policy are after three years of the allotment by the Committee. The date of Resolution of the Committee is 2.2.2002. The letters written by the respondents are dated 29.1.2004, 12.2.2004 and 15.3.2004 (Annexure 'B', 'C' and 'D' to the affidavit-in-reply of the respondent no.2). These letters were never written after reading the new policy dated 7.3.2005 (which was never in existence and could not have been relied upon obviously). Therefore, the arguments of the leaned Counsel appearing for the petitioner that the decision taken in the year 2004 is valid on the basis of the new policy is not accepted by this Court.

6. As a cumulative effect of the aforesaid facts and reasons, the communication dated 12.2.2004 is hereby quashed and set aside. The cancellation of the Watershed Projects as referred to in letters dated 29.1.2004, 12.2.2004 and 15.3.2004 (Annexure 'B', 'C' and 'D' to the affidavit-in-reply of the respondent no.2) are also hereby quashed and set aside. I hereby direct the Respondent No.1 to decide the grant of work of two Watershed Projects at Taluka Radhanpur in

light of the aforesaid observations, within a period of six weeks from the date of the receipt of Writ by this Court.

7. In view of the aforesaid order, Civil Application No.2495 of 2006 in Special Civil Application No.5169 of 2004 does not survive and hence the same is also disposed of.

8. Rule is made absolute to the aforesaid extent. Direct service is permitted.

[D.N. PATEL, J.]

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