

IN THE SUPREME COURT OF INDIA
ORIGINAL JURISDICTION
CONTEMPT PETITION (CR) NO: 2/2001

IN THE MATTER OF:

J.R. PARASHAR & ORS

Versus

PRASANT BHUSHAN & ORS

AFFIDAVIT IN REPLY FILED BY RESPONDENT NO: 3

I, Arundhati Roy, daughter of Mary Roy, resident of 2A Kautilya Marg, New Delhi 110021, do solemnly state and affirm as under. I have received the showcause notice issued by the Supreme Court and I have read and understood the contents of the contempt petition in which this notice has been issued.

My reply is as under:

The gravamen of the charges in the petition against me are contained in the FIR that the petitioners say they lodged in the Tilak Marg police station on the 14th of December 2000. The FIR is annexed to the main petition and is reproduced verbatim below.

First Information Report dated 14.12.2000

“I, Jagdish Prasar, with colleagues Shri Umed Singh and Rajender were going out from Supreme Court at 7.00 p.m and saw that Gate No.C was closed.

We came out from the Supreme Court premises from other path and inquired why the gate is close. The were surrounded by Prasant Bhusan, Medha Patekar and Arundhanti Roy alongwith their companion and they told Supreme Court your father’s property. On this we told them they could not sit on Dharna by closing the gate. The proper place of Dharna is parliament. In the mean time Prasant Bhusan said. “You Jagdish Prasar are the tout of judiciary. Again medha said “SALE KO JAAN SE MAAR DO (kill him). Arundhanti Roy commanded the crow that Supreme Court of India is the thief and all these are this touts. Kill them , Prasant Bhushan pulled by having caught my haired and said that if you would be seen in the Supreme Court again he would get them killed. But they were shouting inspite of the presence of S.H.O and ACP Bhaskar Tilak marg. We ran away with great with great hardship otherwise their goonda might have done some mischief because of their drunken state. Therefore, it is requested to you that proper action may be taken after registering our complaint in order to save on lives and property. We complainants will be highly obliged.

Sd. Complainants”

The main petition is as shoddily drafted as the FIR. The lies, the looseness, the ludicrousness of the charges displays more contempt for the Apex Court than any of the offences allegedly committed by Prashant Bhushan, Medha Patkar and myself. Its contents are patently false and malicious. The police station in Tilak Marg, where the FIR was lodged, has not registered a case. No policeman ever contacted me, there was no police investigation, no attempt to verify the charges, to find out whether the people named in the petition were present at the dharna, and whether indeed the incident described in the FIR (on which the entire contempt petition is based) occurred at all.

Under the circumstances, it is distressing that the Supreme Court has thought it fit to entertain this petition and issue notice directing me and the other respondents to appear personally in court on the 23rd of April 2001, and to “continue to attend the Court on all the days thereafter to which the case against you stands and until final orders are passed on the charges against you. WHEREIN FAIL NOT.”

For the ordinary working citizen, these enforced court appearances mean that in effect, the punishment for the uncommitted crime has already begun.

The facts relating to the petition are as follows:

Contrary to everything the petition says, insinuates and implies - I am *not* a leader of the Narmada Bachao Andolan. I am a writer, an independent citizen with independent views who supports and admires the cause of the Andolan. I was not a petitioner in the Public Interest Litigation petition in the case of the Sardar Sarovar Project. I am not an ‘interested party’. Prashant Bhushan is not my lawyer and has never represented me.

Furthermore in all humility I aver that I do not know who the petitioners are. That I never tried to murder anybody, or incite anybody to murder anybody, in broad daylight outside the gates of the Supreme Court in full view of the Delhi police. That I did not raise any slogans against the court. That I did not see Prashant Bhushan pulled anyone by having caught their haired and said that if you would be seen in the Supreme Court again he would get them killed. That I did not see Medha Patkar, leader of India’s most prominent non-violent resistance movement, metamorphose into a mediocre film actor and say “SALE KO JAAN SE MAAR DO” (Kill the bastard). That I did not notice the presence of any “goondas” in a “drunken state”. And finally, that my name is spelt wrong.

On the morning of the 13th of December 2000, I learned that people from the Narmada Valley had gathered outside the gates of the Supreme Court. When I arrived at the Supreme Court at about 11.30 a.m., gate No.C was already closed. Four to five hundred people were standing outside. Most of them were adivasi people who, as a consequence

of the recent Supreme Court judgement that allowed the construction of the Sardar Sarovar dam to proceed, will lose their lands and homes this monsoon to the rising waters of the reservoir. They have not been rehabilitated. In a few months they will be destitute and have nowhere to go. These people had travelled all the way from the Narmada Valley to personally convey their despair and anguish to the court. To tell the court that in contravention of its order, no land has been offered to them for rehabilitation and that the reality of the situation in the Narmada valley is very different from the one portrayed in the Supreme Court Judgement. They asked the Registrar of the Court for a meeting with the Chief Justice.

A number of representatives of peoples' movements in Delhi, and other supporters of the Andolan like myself, were also there to express their solidarity. I would like to stress that I did not see Prashant Bhushan, the main accused in the petition, at the dharna. Medha Patkar who was there, asked me to speak to the people for five minutes.

My exact words were: "*mujhe paanch minute bhi nahi chahiye aapke saamne apni baat rakhne ke liye. Mein aapke saath hoon.*" (I do not even need five minutes to tell you why I'm here. I'm here because I support you.) This is easy to verify as there were several film and television crews shooting the event. The villagers had cloth labels hung around their necks that said "Project Affected at 90 metres" (the current height of the dam). As time went by and it became clear that the request for a meeting with the Chief Justice was not going to be granted, people grew disheartened. Several people (who I don't know or recognize) made speeches critical of the Court, its inaccessibility to common people, and its process. Others spoke about corruption in the judiciary, about the judges and how far removed they are from ground realities. I admit that I made absolutely no attempt to intervene. I am not a policeman or a public official. As a writer I am deeply interested in peoples' perceptions of the functioning of one of the most important institutions in this country.

However, I would like to clarify that I have never, either in my writing, or in any public forum cast aspersions on the character or integrity of the judges. I believe that the reflexive instinct of the powerful to protect the powerful is sufficient explanation for the kind of iniquitous judgement as in the case of the Sardar Sarovar Project. I did not raise slogans against the court. I did not, as the petition claims, say "*Supreme Court bika hua hai.*" (The Supreme Court has sold out.) I certainly did not "command the crowd that Supreme Court of India is the thief and all these are this touts." (Perhaps the petitioners meant 'crowd'?)

I went to the dharna because I have been deeply distressed and angered by the Supreme Court's majority - and therefore operative - verdict on the Sardar Sarovar Project. The

verdict allowed the project to proceed even though the court was well aware that the Narmada Water Disputes Tribunal had been consistently violated for thirteen years. That not a single village had been resettled according to the directives of the tribunal, and that the Madhya Pradesh Government (which is responsible for 80% of the oustees) had given a written affidavit in court stating that it has no land to resettle them. In effect, the Supreme Court ordered the violation of the fundamental rights to life and livelihood of hundreds of thousand of Indian citizens, most of them Dalit and Adivasi.

As a consequence of the Supreme Court judgement, it is these unfortunate citizens, who stand to lose their homes, their livelihoods, their gods and their histories. When they came calling on the Supreme Court on the morning of the 13th of December 2000, they were asking the Court to *restore* their dignity. To accuse *them* of lowering the dignity of the Court suggests that the dignity of the court and the dignity of Indian citizens are incompatible, oppositional, adversarial things. That the dignity of one can only exist at the cost of the other. If this is so, it is a sad and shameful proposition. In his Republic Day speech, President K.R. Narayanan called upon the nation, and specifically the judiciary, to take special care of these fragile communities. He said, “The developmental path we have adopted is hurting them, the marginalized, the Scheduled Castes and Scheduled Tribes, and threatening their very existence.”

I believe that the people of the Narmada valley have the constitutional right to protest peacefully against what they consider an unjust and unfair judgement. As for myself, I have every right to participate in any peaceful protest meeting that I choose to. Even outside the gates of the Supreme Court. As a writer I am fully entitled to put forward my views, my reasons and arguments for why I believe that the judgement in the Sardar Sarovar case is flawed and unjust and violates the human rights of Indian citizens. I have the right to use all my skills and abilities such as they are, and all the facts and figures at my disposal, to persuade people to my point of view.

The petition is a pathetic attempt to target what the petitioners perceive to be the three main fronts of the resistance movement in the Narmada Valley. The activist Medha Patkar, leader of the Narmada Bachao Andolan and representative of the people in the valley; the lawyer, Prashant Bhushan, legal counsel for the Narmada Bachao Andolan; and the writer (me), who is seen as one of those who carries the voice of the Andolan to the world outside. It is significant that this is the third time that I, as a writer, have had to face legal harassment connected with my writing.

In July 1999, the three judge bench in the Supreme Court hearing the public interest petition on the Sardar Sarovar Project, took offence at my essay *The Greater Common Good* published in OUTLOOK and FRONTLINE magazines. While the waters rose in

the Narmada, while villagers stood in their homes in chest deep water for days on end, protesting the Court's interim order, the Supreme Court held three hearings in which the main topic they discussed was whether or not the dignity of the Court had been violated by my essay. On the 15th of October 1999, without giving me an opportunity to be heard, the court passed an insulting order. Here is an extract.

... 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... vicious stultification and vulgar debunking cannot be permitted to pollute the stream of justice...we are unhappy at the way in which the leaders of NBA and Ms Arundhati Roy have attempted to undermine the dignity of the Court. We expected better behaviour from them...

The order contained a veiled warning to me not to continue with my "objectionable writings".

In 1997 a criminal case for Corrupting Public Morality was filed against me in a District magistrate's court in Kerala for my book *The God of Small Things*. It has been pending for the last four years. I have had to hire criminal lawyers, draft affidavits and travel all the way to Kerala to appear in court.

And now I have to defend myself on this third, ludicrous charge.

As a writer I wish to state as emphatically as I can, that this is a dangerous trend. If the court uses the Contempt of Court law, and allows citizens to abuse its process to intimidate and harass writers, it will have the chilling effect of interfering with a writer's imagination and the creative act itself. This fear of harassment will create a situation in which even *before* a writer puts pen to paper, she will have to anticipate what the court might think of her work. It will induce a sort of enforced, fearful self-censorship. It would be bad for law, worse for literature and sad for the world of art and beauty.

I have written and published several essays and articles on the Narmada issue and the Supreme Court judgement. None of them was intended to show contempt to the court. However, I have every right to disagree with the Court's views on the subject and to express my disagreement in any publication or forum that I choose to. Regardless of everything the operative Supreme Court judgement on the Sardar Sarovar says, I continue to be opposed to Big Dams. I continue to believe that they are economically unviable, ecologically destructive and deeply undemocratic. I continue to believe that the judgement disregarded the evidence placed before the court. I continue to write what I believe. *Not* to do so would undermine the dignity of writers, their art, their very purpose. I need hardly add that I also believe that those who hold the opposite point of view to

mine, those who wish to disagree with my views, criticize them or denounce them, have the same rights to free speech and expression as I do.

I left the dharna at about 6 p.m. Until then, contrary to the lurid scenario described in the petitioners' FIR, I can state on oath that no blood was spilled, no mob was drunk, no hair was pulled, no murder attempted. A little khichdi was cooked and consumed. No litter was left. There were over a hundred police constables and some senior police officers present. Though I would very much like to, I cannot say in good conscience that I have never set eyes on the petitioners because I don't know who they are or what they look like. They could have been any one of the hundreds of people who were milling around on that day.

But whoever they are, and whatever their motives, for the petitioners to attempt to misuse the Contempt of Court Act and the good offices of the Supreme Court to stifle criticism and stamp out dissent, strikes at the very roots of the notion of democracy.

In recent months this Court has issued judgements on several major public issues. For instance, the closure of polluting industries in Delhi, the conversion of public transport buses from diesel to CNG, and the judgement permitting the construction of the Sardar Sarovar Dam to proceed. All of these have had far-reaching and often unanticipated impacts. They have materially affected, for better or for worse, the lives and livelihoods of millions of Indian citizens. Whatever the justice or injustice of these judgements, whatever their finer legal points, for the court to become intolerant of criticism or expressions of dissent would mark the beginning of the end of democracy.

An 'activist' judiciary, that intervenes in public matters to provide a corrective to a corrupt, dysfunctional executive, surely has to be *more*, not less accountable. To a society that is already convulsed by political bankruptcy, economic distress and religious and cultural intolerance, any form of judicial intolerance will come as a crippling blow. If the judiciary removes itself from public scrutiny and accountability, and severs its links with the society that it was set up to serve in the first place, it would mean that yet another pillar of Indian democracy will crumble. A judicial dictatorship is as fearsome a prospect as a military dictatorship or any other form of totalitarian rule.

The Tehelka tapes broadcast recently on a national television network show the repulsive sight of Presidents of the Bhartiya Janata Party and the Samata Party (both part of the ruling coalition) accepting bribes from spurious arms dealers. Though this ought to have been considered prima facie evidence of corruption, yet the Delhi High Court declined to entertain a petition seeking an enquiry into the defence deals that were referred to in the tapes. The bench took strong exception to the petitioner approaching the court without

substantial evidence and even warned the petitioner's counsel that if he failed to substantiate its allegations, the court would impose costs on the petitioner.

On the grounds that judges of the Supreme Court were too busy, the Chief Justice of India refused to allow a sitting judge to head the judicial enquiry into the Tehelka scandal, even though it involves matters of national security and corruption in the highest places.

Yet, when it comes to an absurd, despicable, entirely unsubstantiated petition in which all the three respondents happen to be people who have publicly – though in markedly different ways – questioned the policies of the government and severely criticized a recent judgement of the Supreme Court, the Court displays a disturbing willingness to issue notice.

It indicates a disquieting inclination on the part of the court to silence criticism and muzzle dissent, to harass and intimidate those who disagree with it. By entertaining a petition based on an FIR that even a local police station does not see fit to act upon, the Supreme Court is doing its own reputation and credibility considerable harm.

In conclusion, I wish to reaffirm that as a writer I have the right to state my opinions and beliefs. As a free citizen of India I have the right to be part of any peaceful dharna, demonstration or protest march. I have the right to criticize any judgement of any court that I believe to be unjust. I have the right to make common cause with those I agree with. I hope that each time I exercise these rights I will not be dragged to court on false charges and forced to explain my actions.

The petitioners have committed civil and criminal defamation. They ought to be investigated and prosecuted for perjury. They ought to be made to pay damages for the time they have wasted of this Apex Court by filing these false charges. Above all they ought to be made to apologize to all those citizens who are patiently awaiting the attention of the Supreme Court in more important matters.

Deponent

Verification:

I, the deponent above named do hereby verify that the contents of the above affidavit are true to my knowledge and nothing material has been concealed thereof. Verified at New Delhi on this the 16th day of April 2001.

Deponent