

Gujarat High Court
Gujarat High Court

===== vs Mandamus Or
Other Appropriate ... on 10 September, 2014
C/WPPIL/151/2011 CAV JUDGMENT IN THE HIGH COURT OF GUJARAT AT AHMEDABAD WRIT
PETITION (PIL) NO. 151 of 2011

With

WRIT PETITION (PIL) NO. 210 of 2012

With

SPECIAL CRIMINAL APPLICATION NO. 3147 of 2011 With

CIVIL APPLICATION NO. 5061 of 2012

In WRIT PETITION (PIL) NO. 151 of 2011

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE AKIL KURESHI Sd/- and

H O N O U R A B L E M R . J U S T I C E J . B . P A R D I W A L A S d / -
===== 1 Whether Reporters of
Local Papers may be allowed to see No the judgment ?

2 To be referred to the Reporter or not ? No 3 Whether their Lordships wish to see the fair copy of the No
judgment ?

4 Whether this case involves a substantial question of law as No to the interpretation of the Constitution of
India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ? No
===== GIRISH M DAS -
ADVOCATE HIGH COURT OF GUJARAT....Applicant(s) Versus

ADDITIONAL SECRETARY & 5....Opponent(s)

===== Page 1 of 24

C/WPPIL/151/2011 CAV JUDGMENT Appearance:

MR GIRISH M DAS, ADVOCATE for the Applicant(s) No. 1 GOVERNMENT PLEADER for the
Opponent(s) No. 3 - 5 MR DEVANG VYAS, ADVOCATE for the Opponent(s) No. 1 - 2 NOTICE SERVED
f o r t h e O p p o n e n t (s) N o . 3 - 5
===== CORAM:
HONOURABLE MR.JUSTICE AKIL KURESHI and

HONOURABLE MR.JUSTICE J.B.PARDIWALA

Date : 10/09/2014

COMMON CAV JUDGMENT

(PER : HONOURABLE MR.JUSTICE J.B.PARDIWALA) Since the issues involved in the above captioned matters are interlinked, those were heard together and are being disposed of by this common judgment and order. We propose to first take up the Special Criminal Application No.3147 of 2011.

SPECIAL CRIMINAL APPLICATION NO.3147 OF 2011 This writ-application is at the instance of the parents of 23 different minor children who used to get treatment for severe Thalassemia for the last several years in the Civil Hospital of the city of Junagadh, praying for issue of writ of mandamus or other appropriate writ upon the respondent no.2 Page 2 of 24

C/WPPIL/151/2011 CAV JUDGMENT to appoint an independent agency/officer higher in rank than the respondent no.3 to investigate the complaints of the petitioners in accordance with Chapter XII of the Code of Criminal Procedure and to file report before this Court. Initially, the application was moved before a learned Single Judge, and on 30th November 2011, the learned Single Judge, after taking into consideration the facts that on the selfsame facts indicated in this application a separate writ petition being Writ Petition (PIL) No.151 of 2011 had been filed, directed the registry to place the matter before the Bench taking up Public Interest Litigations.

The case made out by the writ-petitioners in the application may be summed up thus :

The minor children of the petitioners used to get treatment for severe Thalassemia in the Civil Hospital of the city of Junagadh since many years.

The Civil Hospital is established and governed by the State Government and the Civil Surgeon is the Head of the Civil Hospital, and being the Head of the Hospital, the Civil Surgeon was monitoring and supervising the entire activities of Page 3 of 24

C/WPPIL/151/2011 CAV JUDGMENT the Hospital.

In the said Civil Hospital, Pathology Laboratory was also functioning wherein skilled and expert staff were working. The said Laboratory used to make appropriate test of blood, and thereafter, the said blood was being supplied to the patients as and when required.

Due to gross negligence and in violation of regulatory requirement of blood transfusion and/or its components including blood products, infected blood of HIV positive was being supplied to the children/patients by the responsible doctors, staff of the hospital and the blood bank, without there being proper care and caution and knowing fully well that the said blood was to be used during the course of treatment of small and innocent children suffering from the disease like Thalassemia.

On 24th September 2011, 27th September 2011, 4th October 2011 and 11th October 2011, the petitioners filed different written complaints to the "B" Division Police Station, Junagadh, for the cognizable offence punishable under Sections 308, 328, 338, 34 and 114 of the Indian Penal Code Page 4 of 24

C/WPPIL/151/2011 CAV JUDGMENT after it was detected that due to negligence and/or irresponsible activity on the part of concerned Doctors, staff and blood bank, the children of the petitioners were found to be infected with HIV positive.

After filing of the above referred complaints before the respondent no.4, he sat tight over the complaint, and although the complaint disclosed cognizable offences, which required immediate action in terms of provisions laid down under Chapter XII of the Code of Criminal Procedure, the respondent no.4 had failed to discharge his duty by not initiating any action based on those complaints without cogent reasons. Subsequently, the

petitioners gave written application to the respondent no.3 who is superior officer, on 21 st October 2011 as required under Section 154 (3) of the Code of Criminal Procedure for prompt action against the actual and real offenders.

The respondent no.3 also failed to perform his statutory duty envisaged under the provisions of the Code for one month and omitted to initiate the investigation into the offence alleged in the multiple complaints of the petitioners, and as Page 5 of 24

C/WPPIL/151/2011 CAV JUDGMENT such, the writ-application was filed by the petitioners for the reliefs earlier indicated.

The State-respondents, in their affidavits, denied the allegations made in the writ-application and came up with a contention that the children mentioned in the writ-application were infected with HIV+ not due to the blood transfusion in Government hospital, but in view of blood transfusion in some other hospitals.

Since, this Court was not at all satisfied with the manner in which the investigation was being carried on, ultimately, vide order dated 27th June 2012, transferred the investigation to the Central Bureau of Investigation. While directing the CBI to take over the investigation, this Court observed the following :

"51. We, therefore, dispose of the miscellaneous application by directing the CBI to take charge of the investigation immediately and to expeditiously conclude the same after making necessary amendment of the FIR as two of the Children have died in the meantime. The existing Investigating Officer is directed to handover all the papers relating to investigations so far done by her to the CBI.

52. We make it clear that the observations made in this judgment are all for the purpose of showing the reason for the necessity of handing over investigation to the CBI. We are quite conscious that the allegations in the FIR are Page 6 of 24

C/WPPIL/151/2011 CAV JUDGMENT at the level of investigation and thus, while making investigation, the CBI would not be influenced by any of our observations, which merely pointed out instances of inappropriate investigation culminating in passing the present order.

53. We, however, keep the public interest litigation pending for passing appropriate direction if the CBI requires any such direction. We, accordingly formally make CBI a party to this PIL. Let this order be immediately communicated to the CBI at the address given in the Miscellaneous Application filed by the writ-petitioner. The CBI is at liberty to seek for any direction in connection with the investigation if it so requires. Let the matter appear on 26th July 2012."

After the transfer of the investigation to the CBI, the CBI kept on placing its status report from time to time before this Court. The 11th and the final Status Report dated 28th April 2014 was placed before us for our consideration. It appears from the Report that the CBI has concluded the investigation and has filed a closure report under Section 173 of the Code of Criminal Procedure due to lack of evidence, before the Additional Chief Judicial Magistrate, Court No.1, Mirzapur, Ahmedabad.

Since the investigation has been concluded and the final report has already been filed before the Additional Chief Judicial Magistrate, Court No.1, Mirzapur, Ahmedabad, we have to now take a decision, whether we should continue monitoring the progress in the investigation which was ordered by us to Page 7 of 24

C/WPPIL/151/2011 CAV JUDGMENT be taken over by the CBI.

Before answering the aforesaid question posed by us, we deem it necessary to look into the final conclusion of the CBI as contained in its 11th Status Report placed before us. The conclusions are as under :

"(a) The evidence available against the accused persons reveals that there were large scale irregularities in the functioning of the Blood Bank of General Hospital, Junagadh, as detailed above in the various inspection reports. The reports had listed down the following major conclusions :

(i) As a large number of cases are irregular/non- periodic transfusions, transmission of HIV infection may occur due to receipt of infected blood from unauthorized source.

(ii) As these children are prone to other diseases unsafe practices for providing medical care/surgical intervention may be responsible for transmission of HIV infection.

(iii) As high risk samples are being handled and processed in the common area shared with blood bank there is a high risk of contamination of blood bags.

(iv) Discard practices to meet volume needs of the children to be transfused may lead to acquisition of HIV infection from the high risk common

(processing/testing/discard/ washing) area. (v) At the time of inspection the refrigerators used for storage of tested blood units and untested blood units were kept in labs for blood transmissible diseases without any status label. Tested blood bags and untested bloods bags are kept in same refrigerator and some blood bags are stored Page 8 of 24

C/WPPIL/151/2011 CAV JUDGMENT without mentioning the expiry date.

(vi) The shortage of qualified staff in the Blood Bank is also pointed out by the inspection reports and witnesses examined during the investigation. (b) The aforesaid facts pointed out by the various inspection teams are general in nature and are not specifically pointing out any particular lapses against particular individuals. The aforesaid facts may or may not have been responsible for the contraction of HIV by the various Thalassaemic children. Hence, surmises and conjectures cannot be a substitute for irrefutable prosecutable evidence. Moreover, the investigation has not been able to prove any mensrea on the part of officials/Doctors of the Hospital, which resulted in contraction of HIV by 28 Thalassaemic children, who were undergoing blood transfusions periodically at General Hospital, Junagadh. However, there is no doubt that the Blood Bank of General Hospital, Junagadh, was functioning in a highly irregular manner with the additional nuisance created by the Trustees and volunteers of Sarvodaya Blood Bank, in its day to day functioning.

(c) The activities of the Trustees/Volunteers of Sarvodaya Blood Bank in the functioning of the Blood Bank of General Hospital, Junagadh, and the various Outdoor Blood Donation Camps, though were highly irregular and illegal, but these facts could not prove their role in the contraction of HIV by 28 Thalassaemic children, who were undergoing blood transfusions periodically at General Hospital, Junagadh.

(d) The dubious role of two private Blood Banks namely Shree Jivanprakash Foundation Voluntary Blood Bank, functioning from Sardarbagh Road, Junagadh, whose President is Dr.Girishkumar Karmashibhai Gajera, and Navdeep Charitable Trust and Voluntary Blood Bank, functioning from 1st Floor, Sankalp Complex, Opp : Dr.Chikhaliya Hospital, Junagadh, whose Managing Trustee and President is Dr.Nareshbhai Vallabhbhai Patel, in the supply and collection of Blood Bags gives rise to strong suspicion about their shady activities and intentions as has been mentioned in detail above, about their missing or dressed up vital records like Donor Page 9 of 24

C/WPPIL/151/2011 CAV JUDGMENT Registers and Issue Registers.

6. The aforesaid facts and the oral and documentary evidence collected during the investigation, against all the accused persons, prove that there were large scale irregularities and violations of The Drugs and Cosmetics

Act, 1940, The Drugs and Cosmetics Rules, 1945, various guidelines of NACO, GSCBT and DGHS Manual of the Govt. of India, committed by them. As such the following recommendations have been made to the Govt. of Gujarat for taking action as proposed against the following persons :

(i) RDA for Major Penalty has been recommended against Dr.G.T.Dayalu, Dr.D.R.Makwana and Dr.Bhavnaben N.Parmar.

(ii) RDA for Minor Penalty has been recommended against Dr.(Mrs.) Mitaliben D.Jankarand, Dr.Jigna H.Kanzariya.

(iii) Such Action has been recommended against Sh.Rakesh R.Makwana.

(iv) No Action has been recommended against Dr.G.K.Gadhalaria and Sh.S.S.Chanura, as both of them have retired from the service of General Hospital, Junagadh.

(v) No Action has been recommended against S/Sh.Mahendra L.Mashra, Nalin Acharya, Anilbhai Vyas, Kishor P.Dhanesha and Nitin R.Malavia. However, CBI Report has been sent to the Govt. of Gujarat about the unauthorized and illegal activities of the Trustees/Volunteers of Sarvodaya Blood Bank within and outside the premises of General Hospital, Junagadh. Further, it has been recommended that Sarvodaya Blood Bank may be directed to drop the words "Blood Bank" from their registered name as it is misleading the general public.

(vi) The Govt. of Gujarat has also been

recommended to cancel the licenses of Blood Banks of Dr.Naresh V.Patel i.e. Navdeep Charitable Trust and Voluntary Blood Bank, Junagadh, and

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C/WPPIL/151/2011 CAV JUDGMENT Dr.G.K.Gajera i.e. Shree Jivanprakash Foundation Voluntary Blood Bank, Junagadh."

It appears that even according to the CBI, various irregularities and illegalities have surfaced in the functioning of the blood bank of the General Hospital at Junagadh. It has also been stated in the Report that the trustees/volunteers of the Sarvodaya Blood Bank have been unnecessarily interfering with the functioning and management of the Blood Bank of the General Hospital, Junagadh. The CBI has also highlighted in its Report the dubious role of the two private Blood Banks, viz. Shree Jivanprakash Foundation Voluntary Blood Bank, functioning from Sardarbagh Road, Junagadh, and Navdeep Charitable Trust and Voluntary Blood Bank, functioning from 1st Floor, Sankalp Complex, Opp. Dr.Chikhaliya Hospital, Junagadh. The CBI has concluded stating in its Report that the oral and documentary evidence collected during the investigation reveal that there were large scale irregularities and violations of the provisions of the Drugs and Cosmetics Act, 1940, the Drugs and Cosmetics Rules, 1945 and the various guidelines of NACO, GSCBT and DGHS Manual of the Government of India. The CBI, in its Report, has also recommended to take the necessary action against the erring officials responsible for the Page 11 of 24

C/WPPIL/151/2011 CAV JUDGMENT unfortunate incident in question. We had entrusted the investigation to the CBI with lot of hope and expectations that it would be able to collect the necessary evidence to book the culprits responsible for the unfortunate incident. However, we are disappointed to note that the CBI, despite best of its efforts, has not been able to detect the alleged crime and is of the opinion that there is no sufficient evidence to connect any particular person with the alleged crime. In short, it appears from the Report that although the various irregularities and illegalities have surfaced, yet there is no sufficient evidence to impute any mens rea on the part of the officials/doctors of the Hospital, which resulted into contraction of HIV by the

unfortunate 28 Thalassemic children who are undergoing blood transfusion periodically at the General Hospital, Junagadh. Since the CBI has placed its final closure Report before the Additional Chief Judicial Magistrate, Court No.1, Mirzapur, Ahmedabad, we should not comment anything further in that regard. We leave it for the Additional Chief Judicial Magistrate, Court No.1, Mirzapur, Ahmedabad, to proceed further in accordance with law. We do not propose to now continue with the monitoring, and it is for the concerned court, before whom the final report has been placed, to deal with the matter Page 12 of 24

C/WPPIL/151/2011 CAV JUDGMENT appropriately in accordance with law.

In the aforesaid context, we may quote with profit a decision of the Supreme Court in the case of M.C.Mehta v. Union of India, (2008)1 SCC 407. In that case, a question arose before the Supreme Court as to whether after the submission of the final report by the CBI in the Court of Special Judge, pursuant to the Supreme Court's directions, the Supreme Court should examine the legality and validity of the CBI's action in seeking a sanction under Section 197 of the Code for the prosecution of some of the persons named in the final report. Dismissing the application moved by the learned Amicus Curiae seeking directions in this behalf, a three-Judge Bench of the Supreme Court, observed thus:

"The jurisdiction of the Court to issue a writ of continuous mandamus is only to see that proper investigation is carried out. Once the Court satisfies itself that a proper investigation has been carried out, it would not venture to take over the functions of the Magistrate or pass any order which would interfere with his judicial functions. Constitutional scheme of this country envisages dispute resolution mechanism by an independent and impartial tribunal. No authority, save and except a superior court in the hierarchy of judiciary, can issue any direction which otherwise takes away the discretionary jurisdiction of any court of law. Once a final report has been filed in terms of sub-section (1) of Section 173 of the Code of Criminal Procedure, it is the Magistrate and Magistrate alone who can take appropriate decision in the matter one way or the other. If he errs while passing a judicial order, the same may be a subject-matter of appeal or judicial review. There may be a possibility of the Page 13 of 24

C/WPPIL/151/2011 CAV JUDGMENT prosecuting agencies not approaching the higher forum against an order passed by the learned Magistrate, but the same by itself would not confer a jurisdiction on this Court to step in."

Recently, similar views have been echoed by the Supreme Court in Narmada Bai v. State of Gujarat and others, (2011)5 SCC 79. In that case, dealing with the question of further monitoring in a case upon submission of a report by the CBI to the Supreme Court, on the conclusion of the investigation, referring to the earlier decisions in Vineet Narain v. Union of India, (1996)2 SCC 199, Union of India v. Sushil Kumar Modi, (1998)8 SCC 661 and M.C. Mehta (Taj Corridor Scam) v. Union of India, (2007)1 SCC 110, the Supreme Court observed as under :

"70. The above decisions make it clear that though this Court is competent to entrust the investigation to any independent agency, once the investigating agency complete their function of investigating into the offences, it is the court in which the charge-sheet is filed which is to deal with all matters relating to the trial of the accused including matters falling within the scope of Section 173(8) of the Code. Thus, generally, this Court may not require further monitoring of the case/investigation. However, we make it clear that if any of the parties including CBI require any further direction, they are free to approach this Court by way of an application." Deferentially following with the dictum of the Supreme Court in the aforementioned decisions, we are of the opinion that in Page 14 of 24

C/WPPIL/151/2011 CAV JUDGMENT the instant case we have reached a stage where the process of monitoring of the case must come to an end. It would neither be desirable nor advisable to retain further seisin over this case.

Before parting, we deem it necessary to observe that the State Government should take into consideration the final conclusions of the CBI as contained in its 11 th Status Report dated 28th April 2014 very seriously. The CBI has suggested many actions which we want the State Government to immediately look into the same. For better and effective implementation of the recommendations as contained in the 11th Status Report filed by the CBI, we direct the State Government to constitute a high level committee headed by the Principal Secretary, Health Department of the State of Gujarat. The high level committee shall look into the various aspects of the matter which the CBI has highlighted so far as the functioning of the Blood Bank at the General Hospital, Junagadh, is concerned and also various other blood banks operating in the city of Junagadh. If necessary departmental actions are required to be taken against a particular individual, then such actions shall also be taken at the earliest. Page 15 of 24

C/WPPIL/151/2011 CAV JUDGMENT There are many facets of the matter which are required to be taken care of immediately. The first thing we want the State Government to do is, to improve the quality of the functioning of the Blood Bank at the General Hospital, Junagadh without any unnecessary interference from the outsiders like the Sarvodaya Blood Bank and the other two blood banks referred to in the 11 th Status Report by the CBI. The Government should immediately take all necessary steps to correct the various loopholes and shortcomings pointed out by the CBI as regards the functioning of the Blood Bank at the General Hospital, Junagadh.

With the above directions, we dispose of the Special Criminal Application No.3147 of 2011. No costs. The status reports filed by the CBI time to time and ordered to be kept in sealed cover be retained and preserved by the registry.

WRIT PETITION (PIL) NO.151 OF 2011

This writ-application, in the nature of a public interest litigation, has been filed by a practicing advocate of this High Court, praying for the following reliefs : Page 16 of 24

C/WPPIL/151/2011 CAV JUDGMENT "(A) Your Lordships be pleased to direct the State (Respondent No.4) to immediately arrange for payment of expenses as described in Para 10(i) for HIV treatment and for medicine to be used for HIV infected patients, infected for the reasons of sheer negligence on the part of Civil Hospital officials at Junagadh, AND BE PLEASED TO DIRECT continuation of the same till the HIV infection is cured 100%.

(B) Your Lordships be pleased to direct the State (Respondent No.4) to immediately arrange for compensation as described in Para 10(ii) for parents of HIV infected children, infected for the reasons of sheer negligence on the part of Civil Hospital officials at Junagadh.

(C) Your Lordships be pleased to direct the Respondent No.1, 2 and 3, for inquiry and investigation against those all responsible officers of Civil Hospital, Junagadh including Doctors, Blood supplies, Donors and others for causing HIV infection to the innocent children and if found subsequently, to others also.

AND BE PLEASED TO DIRECT

The report to be submitted to this Hon'ble High Court in this Petition separately by all the three authorities in the interest of justice within three weeks from the date of order.

(D) Your Lordships be pleased to direct investigation of the complaints filed before "B" Division Police Station or anywhere against culprits for spreading HIV, the disease dangerous for life.

AND FURTHER BE PLEASED TO DIRECT

Investigation to be carried by Police Inspector personally under direct supervision of Asst. Superintendent of Police (A.S.P.) at Junagadh in the interest of justice. BE PLEASED TO FURTHER DIRECT

That the progress report of investigation be submitted by Asst. Superintendent of Police to this Hon'ble High Court every week and Hon'ble High Court will monitor the affairs through this Petition.

(E) Pending hearing and final disposal of this Petition, Your Lordships be pleased to direct inquiry as to whether any others have been infected with HIV within the vicinity of Junagadh for any reason whatsoever since, unknown Page 17 of 24

C/WPPIL/151/2011 CAV JUDGMENT along with professional donors do have supplied blood to Blood Bank and as such those HIV infected persons needs to be identified in the interest of society at large, or else, similar unfortunate incident is likely to be occurred in future.

(F) Your Lordships be pleased to grant any other and further relief/s as may be deemed fit and proper in the fact and circumstances of the case in the interest of justice."

Taking into consideration the various reliefs prayed for in this writ-application, we are of the opinion that most of those are taken care of by us while disposing of the Special Criminal Application No.3147 of 2011. During the pendency of this writ- application, the petitioner had preferred a Civil Application No.843 of 2012, praying for a direction upon the State respondent to immediately arrange for appliances like room heater or warmer, which can keep atleast rooms of the HIV affected children warm at the temperature suitable to them so that the children are protected from the frosty atmosphere which was prevailing in the city at that point of time. The Court also ensured that all the affected children should be given the necessary treatment free of costs, according to the choice of the parents of those children.

In the aforesaid context, this Court, vide order dated 2nd February 2012, disposed of the said Civil Application observing Page 18 of 24

C/WPPIL/151/2011 CAV JUDGMENT as under :

"In connection with the main matter, the petitioner by this interlocutory application has prayed for direction upon the State-respondent no.4 to immediately arrange appliances like room heater, or warmer which can keep at least rooms of the HIV affected children warm at the temperature suitable to them so that children are protected from the frosty atmosphere prevailing in the State at present.

It appears from the materials on record that out of the children who are infected, two of them have died during the winter.

In view of seriousness of the matter, Mr.Shah, learned advocate appearing on behalf of the State-respondent, in the morning prayed for adjournment of the matter till 2:30 p.m. to enable him to take instruction from his client regarding their immediate treatment.

After taking instruction, Mr.Shah has informed us that the State Government is ready and willing to treat those children as Indoor Patients in any of the following four Government Hospitals, according to the choice of the parents of the children:

1. General Hospital, Junagadh
2. Government Medical College Hospital, PDD, Rajkot
3. Guru Govindsinhji Hospital, Junagadh

4. Civil Hospital, Ahmedabad

Mr.Shah further submits that for their treatment, the State Government will not charge any amount whatsoever. This instruction has been given to Mr.Shah by Dr.S.R.Avasia, Deputy Director, Medical Services, and Mr.J.L.Vala, Under Secretary, Health and Family Welfare Department.

In view of the fair stand taken by the State Government, we dispose of this application by giving option to the parents of the infected children to immediately approach any of the aforesaid four hospitals for the treatment of their children.

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C/WPPIL/151/2011 CAV JUDGMENT Mr.Shah further submits that the parents of the children are free to contact Mr.J.L.Vala, Under Secretary, Health and Family Welfare Department, and he will personally handover the telephone number of Mr.Vala to Mr.Das, so that in case of any difficulty, the parents can directly contact Mr.Vala."

We reiterate that the State Government shall see to it that all the children are provided the best of the treatment. We are at pains to observe that they are suffering from such an ailment wherein the only thing which can be done at this stage is to relieve them as far as possible of the pain and suffering. Therefore, we direct that special care be taken to see that the children do not have to suffer. If the parents are reluctant to continue with the treatment or are irregular, then in such circumstances, they should be explained and persuaded to see that their children should get the best of the medical treatment.

With the above observations, we close this public interest litigation and dispose of the same accordingly. No costs. In view of the order passed in the main petition, the connected Civil Application has become infructuous and is accordingly disposed of.

WRIT PETITION (PIL) NO.210 OF 2012

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C/WPPIL/151/2011 CAV JUDGMENT This writ-application in the nature of a public interest litigation was initially filed by one Babulal Mangaljibhai Thakkar appearing as party-in-person, praying for the following reliefs : "(A) Your Lordships be pleased to direct the Respondents to undertake all available preventive measure and testing to ensure every Blood Bag supplied by Blood Bank for transfusion gets free from every viral infection. (B) Your Lordships be pleased to direct the respondents to issue detailed separate G.R. of information of IPC 269, 270, 274 and CrPC 39 to all Doctors working with Government and order follow accordingly. (C) Your Lordships be pleased to direct the respondent - State of Gujarat to provide free of cost - (No Case Registration free, Free All Lab Test, X-Ray, M.R.I., C.T. Scan etc. as Indoor Patient and Outdoor Patient treatment, at the place of their convenient from time to time, as required, for all HIV positive patient who gets infection through blood transfusion in Gujarat including specifically to HIV (+) Thalassemic children of Gujarat with Allopathic and Indian System of Medicine i.e. Ayurveda, Yoga, Unani, Siddha and Homeopathy. Unique Identification Card to be issued for this treatment facility purpose to facilitate the treatment all over Gujarat. No service charges for blood supply and blood transfusion to be levied from HIV (+) Thalassemic children. (D) Your Lordships be pleased to grant me permission to contact this HIV infected patient at my cost and provide them legal help, free of cost, to get their rights from the State of Gujarat, as I am not a lawyer, I need permission from this Hon'ble Court.

(E) Your Lordships be pleased to direct the State of Gujarat and Union of India to immediately arrange for compensation of Rs.5,00,000 (Five Lacs) per patient for HIV infected patients through blood transfusion for the reasons of sheer negligence on the part of Union of India and State of Gujarat from 2006 to 2009.

(F) Since, HIV AIDS is not curable is advertised for 20 Page 21 of 24

C/WPPIL/151/2011 CAV JUDGMENT years and more than 5 crore people are waiting for this message in India including Gujarat, Your Lordships be pleased to direct the hearing of present PIL on day to day basis in the larger interest of public.

(G) Your Lordships be pleased to grant any other and further reliefs as may be deemed fit and proper in the fact and circumstances of the case in the interest of justice."

However, in the wake of few developments which occurred during the hearing of this matter, we had to delete the name of the petitioner appearing as party-in-person and appointed Mr. Shalin Mehta, the learned senior advocate, as Amicus Curiae to proceed with the matter. We may reproduce the order dated 26th September 2012 passed by this Court. The order reads thus : "Yesterday, when the matter came up for further hearing, our attention was drawn to the fact that the writ-petitioner appearing in person, has written a letter to the Director General of Police, Government of Gujarat, Gandhinagar by e-mail praying for registering FIR under Sections 269, 270, 274, 302, 304, 308, 324, 120B and 114 of the Indian Penal Code and Sections 7, 8, 13(1)(A) and 13(1)(D) of the Prevention of Corruption Act against Mr Manmohan Singh, Prime Minister of India, Mrs. Sonia Gandhi, Shri Sayan Chatterji, Director General, National AIDS Control Organisation, New Delhi and 31 Departmental Heads of National AIDS Council. Today, the petitioner-in-person has affirmed an affidavit justifying his action.

After going through the contents of the said letter written to the Director General of Police, we are of the view that the credentials of the petitioner appear to be doubtful. In Page 22 of 24

C/WPPIL/151/2011 CAV JUDGMENT such circumstances, we propose to rely upon the following observations of the Supreme Court in the case of T.N. Godavarman Thirumulpad vs. Union of India & Others reported in (2006) 5 SCC 28 at paragraph 23 :-

"23. Howsoever genuine a cause brought before a court by a public interest litigant may be, the court has to decline its examination at the behest of a person who, in fact, is not a public interest litigant and whose bona fides and credentials are in doubt. In a given exceptional case where bona fides of a public interest litigant are in doubt, the court may still examine the issue having regard to the serious nature of the public cause and likely public injury by appointing an amicus curiae to assist the court but under no circumstances with the assistance of a doubtful public interest litigant. No trust can be placed by the court on a mala fide applicant in public interest litigation. These are basic issues which are required to be satisfied by every public interest litigation."

Accordingly, we delete the name of the petitioner-in-person from the cause-title, but we propose to proceed with the same as we are of the view that the issue is of serious nature of public cause.

The name of the petitioner-in-person being deleted, we appoint Mr Shalin Mehta, the learned Senior Advocate as amicus curiae to proceed with the matter. Registry is directed to prepare a paper-book out of this record of the case and hand over the same to Mr Mehta by Monday positively. Let the matter appear on October 3, 2012. A copy of the e-mail be kept with the record. Our attention has also been drawn to the fact that the selfsame petitioner has filed another public interest litigation i.e. WP (PIL) No.210 of 2012. Let the said matter appear tomorrow i.e. September 27, 2012 for passing necessary order."

The prayers in this writ-application are also more or less identical to the one contained in the Writ Petition (PIL) No.151 Page 23 of 24

C/WPPIL/151/2011 CAV JUDGMENT of 2011. We have already disposed of the Writ Petition (PIL) No.151 of 2011, and in that view of the matter, nothing more is now required to be done even in this writ-application

filed in public interest.

We, therefore, close this public interest litigation and dispose of the same accordingly. No costs. Sd/-

(AKIL KURESHI, J.)

Sd/-

(J.B.PARDIWALA, J.)

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