

IN THE SUPREME COURT OF INDIA
WRIT PETITION (CIVIL) NO. 404 OF 1979

In the matter of :

COMMON CAUSE (A Registered Society)

... Petitioner

VERSUS

Union of India & Ors

... Respondents

[P A P E R B O O K]

(For Index kindly see Inside)

PETITIONER

Through H D Shourie
Director, COMMON CAUSE
(In-person)

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Petitioner

through

H D Shourie
Director, COMMON CAUSE
(In-person)

Place : New Delhi
Dated :

A

IN THE SUPREME COURT OF INDIA
EXTRA ORDINARY CIVIL JURISDICTION

WRIT PETITION (CIVIL) NO. OF 1999

MEMORANDUM OF PARTIES

COMMON CAUSE
(A Registered Society)
A-31 West End
New Delhi-110 021
through its Director
Shri H.D. Shourie

... Petitioner

Versus

1. Union of India
Ministry of Planning and Programme Implementation
Department of Programme Implementation
Sardar Patel Bhawan
Sansad Marg
New Delhi-110 001
through its Secretary

2. The Chief Election Commissioner
Election Commission of India
Nirvachan Sadan
Ashoka Road
New Delhi

3. The Comptroller and Auditor General of India
10 Bahadur Shah Zafar Marg
New Delhi-110 002

... Respondents

Petitioner

through

H D Shourie
Director, COMMON CAUSE
(In-person)

Place : New Delhi
Dated :

LIST OF DATES AND SYNOPSIS

- 23-12-1993 Prime Minister of India announces the "Member of Parliament Local Area Development Scheme" (MPLADS) in Parliament. The Scheme envisages a certain sum of money being made available to every MP to be spent at his / her discretion within his/her constituency / state for undertaking development schemes.
- 1994 Ministry of Rural Development issues certain guidelines in regard to the concept, implementation and monitoring of MPLADS.
- February, 1997 Ministry of Planning and Programme Implementation (successor to Ministry of Rural Development) issues fresh guidelines superceding those issued earlier in regard to MPLADS.
- 1994 to 1997 Funds available to MPs under the MPLADS are mis-applied and mis-utilised in multifarious ways. Several press reports appear in regard to such mis-utilisation and squandering of funds.
- 11-06-1998 A Report compiled by the Comptroller and Auditor General of India for the year ending March, 1997 in regard to the MPLADS is tabled in Parliament. The Report highlights the mis-application of funds under the MPLADS and its utilisation in violation of guidelines.

C

A sum of Rs.850 crores is made available annually for all MPs together under the MPLADS which is spent with completely unfettered discretion. There is a proposal to enhance the amount per MP from Rs. 1,00,00,000/- per year to Rs.2,00,00,000/- per year. The total sum available under the MPLADS would thus rise to a whopping Rs.1700 crores a year.

The grant of funds to MPs under the MPLADS, in effect and substance, violates provisions of The Representation of the People Act, 1951, being a corrupt practice and an electoral offence.

The Petitioner contends that provisions of the MPLADS have de-generated into a quota of money available to MPs and is being used with completely unbridled discretion. The MPLADS is subversive of the electoral system. It has become a tool of "campaign financing". Funds made available under the MPLADS are used by MPs to reward or punish their electorate.

The MPLADS as put into effect is violative inter alia of provision of Articles 14 and 21 of the Constitution of India.

Hence this Writ Petition.

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OF 1999

In the matter of :

COMMON CAUSE
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A-31 West End
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1. Union of India
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2. The Chief Election Commissioner
Election Commission of India
Nirvachan Sadan
Ashoka Road
New Delhi

3. The Comptroller and Auditor General of India
10 Bahadur Shah Zafar Marg
New Delhi-110 002

... Respondents

PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA FOR ISSUANCE
OF A WRIT OF OR IN THE NATURE OF
CERTIORARI AND/OR MANDAMUS AND/OR
ANY OTHER APPROPRIATE WRIT,
DIRECTION OR ORDER QUASHING THE
"MEMBER OF PARLIAMENT LOCAL AREA
DEVELOPMENT SCHEME" WHEREBY MEMBERS
OF PARLIAMENT HAVE BEEN GRANTED THE
UNBRIDLED DISCRETION TO DISTRIBUTE
LARGESSE OF UPTO RS. ONE CRORE PER
YEAR AS BEING ARBITRARY, SUBVERSIVE
OF THE ELECTORAL PROCESS AND
THEREFORE ILLEGAL; IN THE
ALTERNATIVE FOR APPROPRIATE
DIRECTIONS TO ENSURE THAT FUNDS
UNDER THE SCHEME ARE UTILISED FOR
PUBLIC GOOD IN A SOUND, FAIR AND
JUST MANNER AND NOT AS A TOOL FOR
VOTE GARNERING

To,

Hon'ble The Chief Justice of India and His Lordships
Companion Justices of the Hon'ble Supreme Court of India,

The Humble Petition of the Petitioner abovenamed,

MOST RESPECTFULLY SHEWETH THAT :

1. The Petitioner is a Society registered under the Societies Registration Act, 1860 as a public interest organisation for ventilating common problems of the people. The Petitioner has in the past inter alia brought before this Hon'ble Court and before the Hon'ble Delhi High Court several common grievances of the people for seeking amelioration thereof. The present petition is being filed on behalf of the Petitioner by its Director Shri H.D. Shourie.

2. Respondent No. 1 is the Ministry of Planning and Programme Implementation of the Government of India, which is the Ministry in-charge of administering and supervising the "Member of Parliament Local Area Development MPLADS" that forms subject matter of the present petition. Respondent No. 2 is the Chief Election Commissioner, being the head of the Election Commission of India, which is a Constitutional Authority established to hold, supervise and control the all-important electoral process in our democracy. Respondent No. 2 is responsible inter alia for conducting free and fair election in the country, which, it is the submission of the Petitioner, are being adversely affected by the scheme impugned by way of the present petition. Respondent No. 3 is

the Comptroller and Auditor General of India, who is a Constitutional Authority established to control and audit the utilisation of state funds in the country. All Respondents are "State" within the meaning of Article 12 of the Constitution of India.

3. By way of the present petition the Petitioner impugns certain aspects of the Member of Parliament Local Area Development Scheme (hereinafter referred to as "MPLADS") that was announced in Parliament on 23-12-1993 by the then Prime Minister of India. The scheme envisaged that a certain sum of money would be made available to every Member of Parliament (hereinafter "MP") whether of the Lok Sabha or the Rajya Sabha, and this money could be spent by the MP at his discretion for undertaking and/or funding development schemes within his constituency/state.

4. Thereafter sometime in 1994 Respondent No. 1 (or its predecessor ministry, being the Ministry of Rural Development) issued certain guidelines in regard to the concept, implementation and monitoring of MPLADS. Later, in February, 1997 Respondent No. 1 issued another set of guidelines superseding those issued earlier in regard to the basic concept of the scheme, its implementation and monitoring. A xerox copy of Guidelines dated February, 1997 issued by Respondent No. 1 is attached hereto as ANNEXURE-A.

5. The salient features of the MPLADS as it stands today are the following :

- (a) Under the MPLADS, each Lok Sabha MP may select works / projects to be taken-up in his

constituency to the tune of Rs. 1 Crore per year. This amount is now proposed to be enhanced to Rs. 2 Crores per year ;

(b) Each elected Rajya Sabha MP may select works / projects to be taken-up in one or more District/s in his State for the same amount of money ;

(c) Nominated members, whether of the Lok Sabha or the Rajya Sabha, may also select works / projects for implementation in one or more District/s within any one State of their choice ;

(d) The works / projects intended to be taken-up under the MPLADS are to be developmental in nature based on locally felt needs with a view to creating durable assets and it is intended that funds provided under the scheme should not be applied towards revenue expenditure nor for recurring expenditure ;

(e) It is also the intention that funds available under the MPLADS should be employed in appropriate cases for part-funding of larger projects in the interest of local area development where application of such funds would result in completion of pending projects ;

(f) Guidelines under the scheme provide that where execution of a project is likely to span over several years, funds for such projects should be allocated either in advance or should be committed over the period that it would take to complete the project ;

(g) Guidelines issued under the MPLADS even list by way of illustration the works / projects that are suggested to be taken-up under the scheme and those that are not permissible thereunder ;

(h) The scheme stipulates that in the process of identifying, selecting and granting administrative sanction for works under the MPLADS the District Authorities should invariably obtain the concurrence of the MP concerned, whose advice should prevail ;

(i) It is expressly stipulated in the guidelines that the money allocated under the MPLADS is for a constituency and regardless of any change in the MP for the constituency, allocations are to be made so as to ensure continuity of action in implementing works under the scheme ;

(j) There is special emphasis in the guidelines that works identified by a predecessor which are under execution should be completed by successor MPs ;

(k) It is further stipulated that funds released by the Government of India under the MPLADS would be non-elapsable and if funds remain un-utilised in a particular year, the same would be carried forward to the subsequent year. This stipulation clearly makes the funds allocated under the scheme cumulative, though release of funds is required to be regulated according to utilisation and progress of works. The guidelines however lay down that a successor MP would not be entitled to a fresh allocation of the stipulated amount

in a year if a predecessor MP had already received / utilised a part of the amount in the same year ;

(1) Guidelines issued under the MPLADS also provide for physical monitoring of works and for co-ordination with the Department of Programme Implementation of the Government of India.

6. It is the contention of the Petitioner that while the objectives for launching the MPLADS may have been laudatory, the implementation, administration and final effect thereof has been positively detrimental to the electoral process and democratic ethos in the country. Funds available under the MPLADS have been utilised by MPs as individual wealth to be given away as largesse upon their personal whims and fancy.

7. The intrinsic drawbacks of the MPLADS and the consequential lacunae in its working are summarised hereinbelow :

(a) In effect the MPLADS grants to an MP a sum of Rs.1 Crores (now proposed to be made Rs. 2 Crores) per year to personally reward a group of voters with the inevitable consequence of unduly influencing them, whether in the present or in the future for electoral advantage. Contrarily, a candidate contesting against a sitting MP does not have comparable public funds to squander for impressing his electorate ;

(b) Funds available under the MPLADS are put to misuse since there is no effective control over their utilisation towards beneficial projects. Examples galore where funds disbursed under the MPLADS are utilised not only for non-developmental work but for personal aggrandisement e.g. for purchase of cars, air-conditioners, refrigerators, furniture and even utensils for personal use. Utilisation of MPLADS funds has not been known to follow transparency guidelines as laid down by Respondent No. 3 ;

(c) These funds are even ploughed into funding electioneering budgets by sitting MPs. It is shocking that in certain instances these funds are even lent at discounts to works contractors ;

(d) The utilisation of funds for purely electoral gain and not for developmental purposes inevitably results in unequal development of constituencies / Districts. Furthermore, utilisation of the funds on the whims of individual MPs is an antithesis to planned development ;

8. Several press reports have been appearing in leading newspapers of the country highlighting instances of how money available under the MPLADS is squandered without even a semblance of utilising them for developmental purposes. Xerox copies of some selected newspaper articles have been attached hereto as ANNEXURE-B (Colly) for the perusal of this Hon'ble Court.

9. In a Report compiled by Respondent No. 3 for the year ending March, 1997 (Report No.3 of 1998, Union Government - Civil) which was tabled in Parliament on 11-06-1998, Respondent No. 3 included the following as highlights of the HPLADS in action :

(a) During 1993-97 Respondent No. 1 (or its predecessor Ministry being the Ministry of Rural Development) released Rs.2324.55 Crore against which District Collectors (hereinafter "DCs") spent only Rs.1285.45 Crore. Unspent amount of Rs.1039.10 Crore was lying in account with commercial banks. The percentage of shortfall in utilisation of funds ranged between 0.01 to 92.40 per cent ;

(b) In 332 Districts of 24 States and 6 Union Territories (hereinafter "UTs"), MPs recommended 120242 works during 1993-97. DCs sanctioned 105959 works, 98695 works were taken-up for execution out of which only 60698 works were completed as of March 1997. 4569 works were executed and Rs.51.52 Crore were spent without the recommendation of MPs in 28 districts of 13 States. Rs.24.89 Crore were sanctioned on the recommendations of MP's representatives in 5 States ;

(c) Implementing agencies in 37 Districts of 8 States / UTs did not refund unspent amount of Rs.3.08 Crore even though works were completed / cancelled / not taken up as of March 1997. Utilisation certificate for Rs.339.57 Crore had not been received in 150 Districts of 16 States and 3 UTs. 11 cases of suspected fraud involving Rs.50 Lacs came to notice in 6 States ;

(d) Rs.5.75 Crore was wasted as 802 works in 33 Districts of 15 States were abandoned midway ;

(e) Percentage charges of Rs.3.90 Crore were debited at rates ranging from 1 to 24 per cent in violation of guidelines. An expenditure of Rs.2.72 Crore was incurred in 182 works entrusted to contractors sponsored by MPs/DCs in 9 Districts of 4 States in violation of MPLADS guidelines ;

(f) The accounting procedure for the MPLADS funds has not yet been finalised though the MPLADS came into existence with effect from December, 1993 ;

(g) In 40 Districts of 15 States/UTs, loss of interest was Rs.3.67 Crore due to operating non-interest bearing account, non-refund of interest earned by implementing agencies, transfer of funds to Revenue Deposit/Civil Deposits of State Governments ;

(h) In 15 Districts of 9 States, Rs.46.70 Lacs was utilised for assets and consumables out of interest earned in contravention of Respondent No. 1's instructions prohibiting such utilisation. In 29 Districts of 14 States, Rs.2.05 Crore were spent on purchase of stock items in violation of MPLADS provisions ;

(i) Rs.4.06 Crore were spent on 229 works not admissible under the MPLADS for construction of office buildings, residential building etc. Besides Rs.1.53 Crore were spent in 17 Districts in 7 States on 93

inadmissible works belonging to commercial organisations, trusts, co-operative institutions, registered societies, etc ;

(j) Grants and loans involving Rs.17.02 Crore were sanctioned from out of the funds for MPLADS in utter disregard of the guidelines ;

(k) Contrary to the guidelines, in 14 Districts of 6 States, Rs.58.75 lakh were spent on 64 works relating to religious places ; and

(l) In 28 Districts of 10 States, 2190 works with total outlay of Rs.20.44 Crore were executed without obtaining technical sanction and administrative approval.

The Petitioner has attached hereto as ANNEXURE-C a copy of the Report of Respondent No. 3 for the year ending March, 1997 aforesaid and seeks leave to refer to and rely upon the contents thereof for the purposes of the present petition.

10. Part VII Chapter I of the The Representation of the People Act, 1951 deals with corrupt practices and electoral offences. Section 123 of the said Act recites inter alia as follows :

"123. Corrupt practices.- The following shall be deemed to be corrupt practices for the purpose of this Act :

(1) Bribery that is to say -

(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the objects, directly or indirectly of inducing -

(a)

(b) an elector to vote or refrain from voting at an election, or as a reward to -

(i)

(ii) an elector for having voted or refrained from voting;

(B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward :

(a)

(b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw or not to withdraw his candidature.

Explanation.- For the purposes of this clause the term "gratification" is not restricted to pecuniary gratifications or gratifications estimable in money and it includes the payment of any expenses bona fide incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in section 78.

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right :

Provided that -

- (a)
- (i)
- (ii)

(b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right shall not be deemed to be interference with the meaning of this clause.

11. Section 77 of the same Act stipulates accountability and limit in regard to election expenses, that is to say every candidate at an election is required to keep a separate and correct account of all expenditure incurred or authorised by him in connection with an election and a maximum limit in regard to such expenditure is also fixed by law.

12. It is the contention of the Petitioner that the provisions and more importantly the manner of working / implementing the MPLADS is violative of the provisions of the Constitution of India, The Representation of the People Act, 1951 and of the Rule of Law.

13. The Petitioner imputes the MPLADS the following, amongst other

G R O U N D S

A. Because a sum of Rs 850 Crores is made available collectively for all MPs under the MPLADS to spend with completely unfettered discretion, which is clearly arbitrary and therefore violative of Articles 14 and 21 of the Constitution of India ;

B. Because with the proposed increase in the amount of fund available under the MPLADS from Rs.1 Crore per MP to Rs.2 Crores per MP, this figure would rise to a whopping Rs.1700 Crores without however, even so much as a pretence of accountability, thereby resulting in gross misuse of the taxpayer's money, which ought not to be permitted to happen ;

C. Because the grant of funds to MPs under the MPLADS is, and in any event, in effect becomes, violative of provisions of the The Representation of the People Act, 1951, being a corrupt practice and an electoral offence as defined inter alia in Section 123 of that Act, which includes the giving of any gift, offer, promise, gratification or reward by a candidate with the object of directly or indirectly inducing an elector to vote or refrain from voting at an election. In fact as per the Explanation to Section 123 aforesaid, the term "gratification" is not restricted to pecuniary gratification alone. Furthermore, exerting undue influence over the free exercise of any electoral right is also a corrupt practice within the meaning of The Representation of the People Act ;

D. Because the provisions of the MPLADS have degenerated into a quota of money available to MPs with authority to use the same with completely unbridled discretion. The MPLADS has become an instrument of subversion of the electoral system. It has even become a tool of "campaign financing" in certain cases. The availability of discretionary funds under the MPLADS has been so often misused by sitting MPs and it grants an

unfair incumbency advantage to them, which is again detrimental to the rule of law in a Parliamentary democracy ;

E. Because the net impact of the completely discretionary grant now amounting to Rs. **One** Crore made available to Members of Parliament creates a tremendous disadvantage for any candidate wishing to challenge an incumbent. This trend set for Members of Parliament is now being followed even for Members of Legislative Assemblies, Municipal Corporations etc. For example, an MLA in Andhra Pradesh gets Rs. 50 Lacs every year for spending in his constituency in any manner he desires. An MLA in Delhi also gets a discretionary grant of Rs. 35 Lacs a year. In Delhi, a Municipal Councilor gets over Rs. 25 Lacs per year for such purpose. Similarly, every Member of the Bombay Municipal Corporation gets around Rs. 50 Lacs a year in violation of the provisions of the Constitution and the law as stated above ;

F. Because the negative impact of the MPLADS goes further and Members of Parliament punish villages which did not vote for them in a previous election. It has also been noticed that elected MPs visit villages and announce that funds will not be released for such-and-such village because some residents of that village canvassed for an opposing candidate. Such utterances create an air of threatened menace which helps incumbent MPs and MLAs and which cuts at the very roots of a free democratic process ;

G. Because Respondent No. 2 has only one guideline in regard to the MPLADS which says that discretionary

funds are not to be sanctioned / disbursed during the period of 3 months immediately preceding any scheduled elections or once elections are announced. Such guidelines however do not in any manner alleviate the problem. While this is a good sign inasmuch as Respondent No. 2 de facto recognises the adverse impact of such discretionary grants, the ground reality is that all such funds are promptly released within the first eight weeks or so of any financial year. No Member of Parliament waits for the end of a financial year to release his funds and if elections are anticipated, recommendations are often made even earlier. In effect therefor the 3-month pre-election bar is not an effective impediment to misuse of such funds. Having recognised this problem, it now remains for Respondent No. 2 to take a stand and stop the subversive and corrupting influence of such funds ;

H. Because funds available under the MPLADS are being blatantly misappropriated and used fraudulently as is clear from the Report No.3 of 1998, Union Government - Civil prepared by Respondent No. 3, a copy whereof is attached as ANNEXURE-C hereto ;

I. Because the MPLADS is violative inter alia of the provisions of Articles 14 and 21 of the Constitution of India.

14. The above grounds are being taken without prejudice to one another and the Petitioner craves leave to add to or amend the above grounds.

15. The Petitioner wishes to state that various authorities, including the Hon'ble High Court of Delhi and the Governor of Maharashtra Shri C Subramaniam have ruled against and decried the systems of quotas for members of Parliament such as quotas for Kendriya Vidyalaya school admissions, for LPG and telephone connections etc. The Petitioner ventures to say that just as a quota for essential services is considered an unacceptable power of patronage vested in a MP, so also, the discretionary fund available under the MPLADS is a completely avoidable corrupting power vested in an MP.

16. The Petitioner further wishes to suggest certain measures which, if co-ordinated by the various arms of the Government, would go a long way in healing this canker that ails the democratic system. The Petitioner suggestions are :

(a) The name of the scheme should be changed so that MPs are not encouraged to plant signboards to advertise their contribution towards their constituencies, giving them an unfair advantage over non-encumbent contestants ;

(b) The unfettered right of an MP to select the works / projects that may be undertaken using the funds available under the MPLADS should be withdrawn ;

(c) Impersonal guidelines should be laid down regarding the manner in which a work / project would be chosen, albeit in the constituency of the MP concerned on the lines say of the Jawahar Rozgar Yojana ;

(d) Implementation of a project selected under the MPLADS should be brought under the District Planning Board of which every MP and MLA of a District is in any case a member ;

(e) Guidelines laid down by Respondent No. 3 for utilisation of State funds must be applied equally and strictly to disbursement of funds under the MPLADS.

17. It is stated and submitted that the unfettered discretion vested in MPs in this regard should be stopped forthwith. The country is worried about the way funds are being allocated and spent on personal whims and fancies. This Hon'ble Court may be pleased to direct Respondent No. 1 to suggest other ways whereby the unfettered discretion of one person holding the office of an MP or an MLA is revoked and a normal administrative system is implemented. Pending such action by Respondent No. 1, the Petitioner submits that the funds currently under release under the MPLADS be directed to be stopped.

18. The present petition is being preferred bona fide, in the interests of justice and in public interest.

19. No other writ petition or other proceeding has been initiated by the Petitioner before any other High Court or before this Hon'ble Court in regard to the subject matter of the present petition.

20. The Petitioner has no alternative equally efficacious remedy in law for the cause of action being agitated herein.

P R A Y E R

In the above premises, it is prayed that this Hon'ble Court be pleased :

(i) to issue a writ of or in the nature of certiorari and/or mandamus and/or any other appropriate writ, Order or direction, quashing the Member of Parliament Local Area Development Scheme as presently in force, by whatever name called ;

(ii) to issue a writ of or in the nature of mandamus and/or any other appropriate writ, Order or direction, issuing such guidelines in regard to the MPLADS as this Hon'ble Court may deem necessary and proper and directing the Respondents or any of them to implement and strictly monitor compliance with such guidelines ;

(iii) to pass such other and further Orders as may be deemed necessary and proper on the facts and in the circumstances of the case.

FOR WHICH ACT OF KINDNESS, THE PETITIONERS SHALL, AS IN DUTY BOUND, EVER PRAY.

Petitioner

through

H.E. Shourie
Director

Place : New Delhi
Dated :