
(2008) 02 AHC CK 0216

In the Allahabad High Court

Case No : Writ Petition No. 1173 (MB) (PIL) of 2008

Ashok Pandey and others

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision : 15-02-2008

Acts Referred:

Citation : (2008) 02 AHC CK 0216

Hon'ble Judges : Pradeep Kant, J and S.N.Shukla, J

Final Decision : Dismissed

Judgement

1. This petition in the nature of Public Interest Litigation seeks the issuance of a writ, order or direction in the nature of mandamus directing the Central Government for issuing necessary directions to ensure safety and security of the inhabitants of their State (Uttar Pradesh) residing in Mumbai and other parts of the State of Maharashtra.

2. It also makes a prayer for issuing a direction to the Election Commission of India to derecognise and cease the symbol allotted to Maharashtra Nav Nirman Sena, a political party presently being chaired as President by Sri Raj Thackrey.

3. Relying upon the paper reports and the telecast on different TV channels, the petitioners, who are practising advocates, have filed this petition, expressing their deep and grave concern over the happenings in the State of Maharashtra and the alleged deliberate or otherwise inaction on the part of the State Government of Maharashtra in not making any effort and taking steps for controlling the wholly unconstitutional and riotous disorder created in Mumbai and other parts of the State of Maharashtra putting the life of nonMaharashtrians and in particular of the North Indians in peril? The incidents of beating and humiliating the nonMaharashtrians and in particular, inhabitants of Uttar Pradesh and hindi speaking belt, have prompted the petitioners to seek the aforesaid directions.

4. Placing reliance upon the provisions of Article 19(i)(d) and (e), it has been

submitted by Sri Ashok Pandey, one of the petitioners in person, that the attempt to throw out the inhabitants of Uttar Pradesh or to say nonMaharashtrians, outside the State of Maharashtra and not to allow them to settle there, is gross violation of the aforesaid provisions of the Constitution and also violates the guarantee given in Article 301 of the Constitution. According to the petitioners, this amounts to infringement of the fundamental rights of the citizens of this country and cannot be allowed to be perpetrated nor can be allowed to go unchecked.

5. The petitioners argue that since the State Government of Maharashtra as well as the Central Government have failed to discharge their constitutional obligations, such action are likely to effect the sovereignty and integrity of the Indians, which has to be protected and honoured by one and all, without any exception. The Central as well as the State Government are under an oath to protect the citizens of this country, wherever they may reside, go or settle.

6. In response, Sri Alok Kumar Mathur, learned counsel for the Union of India, has submitted that this petition itself is not maintainable for the following reasons:

1. This Court at Lucknow is having no territorial jurisdiction to issue any direction to the State of Maharashtra or the Union of India, as no cause of action or part thereof, has accrued within its jurisdiction;

2. The petitioners though, in substance, seek interference by the Central Government against the State of Maharashtra, but the latter has not been impleaded as a party;

3. Likewise, derecognising the political party headed by Sri Raj Thackrey, is the prayer but neither the party nor Sri Raj Thackrey has been impleaded;

4. There is no material on record supported by any evidence, even of primary nature, so as to infer about the vague allegations with respect to the alleged incidents of beating and humiliating the residents of Uttar Pradesh, in Mumbai or in other parts of Maharashtra, which is allegedly the cause of action for filing the petition at Lucknow. Mere selfassessment of the petitioners that the Central Government or the State Government, if necessary and if the circumstances warrant, would not take appropriate measures, as required under law, cannot be a ground for assuming any inaction on their part; and

5. Maintenance of law and order in the State and giving protection to all the persons in the country, is the duty and obligation of the State, may be the State Government or the Central Government, in which domain, the High Court would, rarely tread in.

7. Learned counsel also submitted that Public Interest Litigation cannot be filed without making out a strong case for interference by the Court and on vague and uncorroborated pleadings.

8. In support of his plea that this Court will have no territorial jurisdiction to entertain this petition, he relies upon the case of *Om Prakash Srivastava v. Union of India and another*, (2006) 6 SCC 207 and in support of the plea that this Public Interest Litigation is not maintainable as the ingredients required for the purpose are not present, learned counsel placed reliance upon the cases of *Rajiv Ranjan Singh "Lalan" (VIII) and another v. Union of India and others*, (2006) 6 SCC 613; *Dattaraj Nathuji Thaware v. State of Maharashtra and others*, (2005) 1 SCC 590; *Ashok Kumar Pandey v. State of W.B.*, (2004) 3 SCC 349; and *Gurpal Singh v. State of Punjab and others*, 2005(5) SCC 136.

9. Though T.V. reports and newspaper reports, in facts and circumstances of a case, can be taken into consideration and may also be admissible for establishing that some disturbance is going on in the State of Maharashtra and particularly in Mumbai but general allegation and assertion that the residents of north India and in particular, those of Uttar Pradesh are being forcibly ousted from the territory of the State of Maharashtra and are being humiliated and beaten, would not constitute a cause of action or part thereof, to file the petition at Lucknow.

10. Under Article 226(2) of the Constitution, cause of action or part thereof, should necessarily arise within the territorial jurisdiction of the High Court, where the petition is filed.

11. Maintaining law and order and protecting the life and property of the citizens and for that matter all the persons in the country, living in one particular State or the other, is the constitutional obligation of the State Government as well as of the Central Government. We do not have any reason to believe nor to infer that the Central Government and the State Government, if need be, would not take prompt, effective and necessary steps to curb the illegal, antisocial and unconstitutional activities and not to enforce law against the persons, who are guilty for creating such a situation. The State Government or the Central Government cannot sit tight and unfret, if such a situation arises.

12. Interference by the High Court under Article 226 in such matters has to be rare, as the issue lies in the domain of the administration and administrative agencies and the Court should be loath in entertaining such matters, unless exceptional circumstances exist and there appears to be a complete unwillingness or reticence on the part of the Government in dealing with the situation. The Court would not sit as a silent spectator, in case the constitutional guarantees and the fundamental rights of the citizens and persons in the country or any one of them or group of them, are violated and infringed and would also not hesitate in issuing necessary directions for protecting and enforcing all such rights. But for making such interference, the necessary pleadings, the relevant evidence and the jurisdiction of the Court shall necessarily have to be seen. We also find force in the argument of the respondents that in the absence of the State of Maharashtra being impleaded as a party, no direction could have otherwise, even be asked for, against the Central Government, which, in effect, would mean some action to be taken against the alleged inaction of the State

Government of Maharashtra by the Central Government.

13. Similarly, the prayer for derecognition of the political party, headed by Sri Raj Thackrey, cannot be entertained, in the absence of the party and Sri Raj Thackrey being impleaded. Apart from the nonimpleadment of the aforesaid parties, no direction can be issued by the High Court for derecognising a particular political party to the Election Commission of India, particularly when no such prayer has been made to the Election Commission of India nor any such cogent ground has either been raised or mentioned in the petition. The Court would not issue any such directive, which subject lies within the domain of the constitutional functionaries, viz. the Election Commission.

14. For the reason that no cause of action has accrued to the petitioners to file the present petition at Lucknow, this Court does not have jurisdiction to entertain the petition and also for the reasons aforesaid, the petition cannot be entertained, which is hereby dismissed summarily.