
(2017) 01 UK CK 0010
In the Uttarakhand High Court
Case No : 72 of 2016

Daulat Kunwar

APPELLANT

Vs

State of Uttarakhand and others

RESPONDENT

Date of Decision : 07-01-2017

Acts Referred:

Constitution of India, Article 14, Article 25, Article 17, Article 366 - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Freedom of conscience and free profession, practice and propagation of religion - Abolition of untouchability - Definitions
Protection of Civil Rights Act, 1955, Section 3, Section 4 - Punishment for enforcing religious disabilities - Punishment for enforcing social disabilities

Citation : (2017) 01 UK CK 0010

Hon'ble Judges : K.M. Joseph, Alok Singh

Bench : Division Bench

Advocate : Ayush Negi, Pradeep Joshi, Vikas Bahuguna

Final Decision : Disposed

Judgement

1. Impleadment Applications are not seriously opposed. In such circumstances, the applications will stand allowed.

2. The issues, which are raised in this Public Interest Litigation are essentially centered around Dehradun District and it concerns with the rights of members of Dalit Community. Principally projected before us is the complaint that Dalits are not being allowed free entry in the Temples in the Jaunsar-Bawar Region in Chakrata Tehsil in Dehradun District. It is stated in the writ petition, inter alia that on 20.05.2016 in the Silgur Devta Temple in Punah Pokhri in Dehradun District, the petitioner along with one sitting M.P. of B.J.P. party, namely Tarun Vijay were attacked by a mob being agitated by the fact that they had along with others entered the inner sanctum of the Temple when there is no entry or limited entry of lower castes in Temples of the said region. There is also

reference to the Caste System in India and to the fact that a person's social status is obligated to which caste they were born into. It is contended that Caste System is highly prevalent in modern India in forms like manual scavenging, landless farm workers and peasants and being forced into various other menial bonded labour such as washing clothes, collecting human faeces, physical and sexual violence relating to lower caste women and young girls, exploitation of Dalits and discrimination in employment. Petitioner relies on Article 14 of the Constitution of India, which proclaims Equality before law and equal protection of the laws; Article 17 of the Constitution of India, by which untouchability has been abolished and its practice in any form is forbidden; Article 25 of the Constitution of India which provides for entitlement to all persons to freedom of conscience and the right freely to profess, practise and propagate religion, subject to public order, morality and health and also to other provisions of Part III. No doubt, this is subject to various provisions in the subsequent Sub-Articles. The Jaunsar-Bawar region has been notified as a Tribal area on 24.06.1967. There is reference to the petitioner along with other members of Dalit Community and M.P. being mercilessly beaten up. It is further contended that entry of lower castes or Dalits in the Temples in Jaunsar-Bawar region is restricted in around 340 Temples across the region and there is clear violation of Right to Equality and it also attracts Article 17 of the Constitution of India, runs the case of the petitioner.

3. A counter affidavit has been filed on behalf of Senior Superintendent of Police. It is stated that the case has been registered and investigation has been transferred to C.B.C.I.D. in regard to the incident, which the petitioner has cited.

4. In the counter affidavit of the District Magistrate, it is specifically stated that the provisions of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, as amended are being complied with in the entire State, though the entire Jaunsar-Bawar area comes under the Tribal area and any action under Section 10 can be taken in appropriate cases. It is also stated that the provisions of the Protection of Civil Rights Act, 1955 are also being complied with. For complying with the maintenance of law and order in the area, it is stated that the Patwaris have been given powers of Police under the provisions of the Jaunsar Bawar Pargana (District Dehradun) Revenue Officials (Special Powers) Act, 1958. A Committee has been constituted on 24.05.2016 for the removal of difficulties consisting of S.D.M. Chakrauta, Kalsi and Tyuni as Chairman and Tehsildar, Naib Tehsildar, Principal Member, Zila Panchayat as members along with nomination of four persons of the Scheduled Caste and two persons of the Schedules Tribe of the concerned village or the nearest village. It is stated that the persons holding the post of S.D.M. and Tehsildar are also members of the Scheduled Caste and no incident of any discrimination of Caste, Colour or Sex has come to their knowledge. There is also reference to a case registered against the petitioner under Sections 153A, 295A and 505 of the Indian Penal Code. It is also stated that the policing system in the Revenue areas is in practice since the British period for which relevant orders were issued in the year 1958 and subsequently

in the year 1977. It is further stated that the Revenue Officials are given Special Police Training. It is stated that the Revenue Officials are well trained and have the personal knowledge of each person in the Revenue Area and their investigation have also been mostly fruitful. It is stated that they are also well versed with other subjects such as Drug Trades/Authorities, Forest/Deforestation matters, Bonded Labour/Labour Officials, Immoral Trade etc., however, some complicated matters are transferred to the regular police after due permission/knowledge of District Magistrate. It is further stated that no incident of Bonded Labour Act or Forced Labour has come to the knowledge of the officials.

5. A supplementary counter affidavit is filed on behalf of S.D.M. Chakrata, wherein, inter alia it is submitted that in the year 2010 complaints of bonded labour were received regarding 159 people in the villages under Block and Tehsil Chakrata. However, after detailed enquiry conducted by the Vigilance Committee, comprising of the Revenue Officers, officials of the Labour Department and members, no case of bonded labour was found. It is further stated that in the entire Jaunsar-Bawar region, there is not a single instance of any person being made to do bonded labour for repayment of debt and there is no such industry/institution in the area where any case of forced labour is evident. It is stated that the Jaunsar-Bawar area is a hilly region where the seasonal fruit cultivation is mostly dependent on rains, however, despite these circumstances the bonded labour system has neither existed nor is in existence. It is stated that the State Government is giving special attention in providing food and education to the financially weak sections of the society, especially the persons living below the poverty line and the petitioner who lives in an Urban area instead of bringing in the issue of development, is trying to disturb the mutual understanding, social balance and rituals.

6. We have heard Mr. Ayush Negi, learned Counsel for the petitioner and Mr. Pradeep Joshi, Standing Counsel for the State of Uttarakhand and Mr. Vikas Bahuguna, learned counsel for the interveners.

7. The first issue we must consider is the plea that members of Dalit Community are not being permitted to enter into the Temples. Parliament enacted the Protection of Civil Rights Act, 1955 (from hereinafter referred to as the "said Act"). It came into force on 01.06.1955. "Civil Rights" has been defined as any right accruing to a person by reason of the abolition of untouchability by Article 17 of the Constitution. Section 2(d) of the said Act defines "place of public worship" as follows : "2(d) "place of public worship" means a place, by whatever name known, which is used as a place of public religious worship or which is dedicated generally to, or is used generally by persons professing any religion or belonging to any religious denomination or any section thereof, for the performance of any religious service, or for offering prayers therein, and includes- (i) all lands and subsidiary shrines appurtenant or attached to any such place; (ii) a privately owned place of worship which is, in fact, allowed by the owner thereof to be used as a place of worship; and (iii) such land or

subsidiary shrine appurtenant to such privately owned place of worship as is allowed by the owner thereof to be used as a place of public religious worship; (da) "prescribed" means prescribed by rules made under this Act; (db) "Scheduled Castes" has the meaning assigned to it in clause (24) of article 366 of the Constitution;

8. "Scheduled Castes" has been defined as having the meaning assigned to it in clause (24) of Article 366 of the Constitution of India.

9. Section 3 of the said Act provides as follows: "3. Punishment for enforcing religious disabilities.- Whoever on the ground of "untouchability" prevents any person - (a) from entering any place of public worship which is open to other persons professing the same religion or any section thereof, as such person; or (b) from worshipping or offering prayers or performing any religious service in any place of public worship, or bathing in, or using the waters of, any sacred tank, well, spring or water-course [river or lake or bathing at any ghat of such tank, water-course, river or lake] in the same manner and to the same extent as is permissible to the other persons professing the same religion or any section thereof, as such person, shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees."

10. Thereafter, Section 4 of the said Act provides as under: "4. Punishment for enforcing social disabilities- Whoever on the ground of "untouchability" enforces against any person any disability with regard to-

(i) access to any shop, public restaurant, hotel or place of public entertainment; or

(ii) the use of any utensils, and other articles kept in any public restaurant, hotel, dharmshala, sarai or musafirkhana for the use of the general public or of any section thereof; or

(iii) the practice of any profession or the carrying on of any occupation, trade or business or employment in any job; or

(iv) the use of, or access to, any river, stream, spring, well, tank, cistern, water-tap or other watering place, or any bathing ghat, burial or cremation ground, any sanitary convenience, any road, or passage, or any other place of public resort which other members of the public, or any section thereof, have a right to use or have access to; or

(v) the use of, access to, any place used for a charitable or a public purpose maintained wholly or partly out of State funds or dedicated to the use of the general public or any section thereof; or

(vi) the enjoyment of any benefit under a charitable trust created for the benefit of the general public or of any section thereof; or

(vii) the use of, or access to, any public conveyance; or

(viii) the construction, acquisition, or occupation of any residential premises in any locality, whatsoever; or

(ix) the use of any dharmshala, sarai or musafirkhana which is open to the general public, or to any section thereof; or

(x) the observance of any social or religious custom, usage or ceremony or taking part in, or taking out, any religious, social or cultural procession; or

(xi) the use of jewellery and finery; shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.

11. It is quite clear that the Parliament purporting to represent the will of the people in independent India in the very first decade after India obtained independence, has enacted the law and subjecting it to amendments subsequently also by which it has given teeth to the mandate of Article 17 of the Constitution of India. The worth of any person cannot be left to be determined by the Caste into which he is born in free and independent India, which is wedded to the Rule of law, and to democracy, socialism as is evident from its preamble. The golden thread that runs through the Constitution is best found enshrined in the dynamic and noble concept of equality embedded in Article 14 of the Constitution of India. It provides for equality of all persons subject no doubt to the doctrine of reasonable classification. Coming to the specific issue of entry into Temples, the places of public worship, the mandate of Section 3 of the said Act is that it creates an offence when a person is prevented on the ground of untouchability from entering into any place of public worship, which is open to other persons, which persons profess the same religion or any section thereof, as the person who is prevented. It equally purports to proscribe the preventing of the worshipping or offering of prayers or performing any religious service in any place of public worship or bathing in, or using the waters of, any sacred tank, well, spring or water-course, river or lake or bathing at any ghat of such tank, water-course, river or lake in the same manner and to the same extent as is permissible to the other persons. Therefore, the principle which is discernable is that it seeks to introduce the concept of equality and to allow the members of the Dalit Community to enjoy the same rights, as are available to the members of the Hindu Religion or the sections thereof in regard to accessing various rights in regard to places of public worship. Therefore, if any member of the Dalit Community is prevented from enjoying the rights, which are available to the members of the Hindu Religion or section thereof, it would certainly be an activity, which attracts the penal provisions contained in Section 3 of the said Act. It is the bounden duty of the State and of all authorities under the State to see that the members of the Dalit Community enjoy the rights, which have been created for them under the Constitution of India, namely, the Protection of Civil Rights Act, 1955 and also the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. No doubt, the case of the respondent as discerned

through the affidavit of the Magistrate is that the said Acts are being observed.

12. According to Mr. Vikas Bahuguna, learned counsel for the interveners, only members of certain families are entitled to enter the sanctum sanctorum. We do not wish to go into the specifics of this aspect. We only wish to observe that if any member of general public or any other section thereof is allowed entry into any part of the Temple or to enjoy any other right in regard to the Temples, which are subject matter of the said Act, then no member of the Dalit Community can be discriminated against and it will be the bounden duty of the State authorities to see that they enjoy their rights with full dignity and without facing any kind of threat to their persons or their properties.

13. We direct that the respondent authorities will enforce the provisions of the said Act in the light of the observations which we have made hereinbefore.

14. As regards the question of bonded labour, we do not see that any case has been made out as such by the petitioner in the state of the pleadings presented before us; but that is not to say that if the petitioner is still able to establish any such case, he will not be free to ventilate the grievances in such a situation.

15. We dispose of the writ petition with the aforesaid observations and directions.