
(2014) 05 DEL CK 0047
In the Delhi High Court
Case No : W.P. (C) 3604/2014

Mool Chand Kucheria

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 28-05-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 32
Penal Code, 1860 (IPC) — Section 494

Citation : (2014) 05 DEL CK 0047

Hon'ble Judges : G. Rohini, C.J;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Kaushal Yadav, Advocate for the Appellant; Abha Malhotra, Advocate for R-1and2, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. This petition under Article 226 of the Constitution of India filed as a Public Interest Litigation seeks a direction to the Govt. of India, to implement in a time bound manner the suggestion contained in the judgment of the Supreme Court in Smt. Sarla Mudgal, President, Kalyani and others Vs. Union of India and others, to secure for the citizens a uniform Civil Code throughout the territory of India and also seeks a direction for constitution of a Committee of religious Gurus/Experts to see the smooth implementation of the said guidelines.

2. The Supreme Court in Sarla Mudgal supra while dealing with the petitions under Article 32 of the Constitution of India concerned with the status of the second marriage of a Hindu husband after conversion to Islam held such second marriage to be a void marriage in terms Section 494 of the IPC. However earlier judgments of the Supreme Court on the need for a uniform civil code throughout the territory of India and the long way it will go in solving the problems were noticed and it was observed that the Government would be well advised to entrust the responsibility to the Law Commission to bring about the comprehensive legislation in keeping with modern day concept of human rights.

3. Nevertheless the fact remains that the Supreme Court, inspite of having held so, did not issue any direction as the petitioner is asking us to issue. The reason therefor is clear from the other judgments of the Supreme Court. The Supreme Court in *A.K. Roy and Others Vs. Union of India (UOI) and Others*, held that it is not for the Courts to censure the Executive nor is it for the Courts to take over the function of the Parliament, otherwise, there will be chaos with each organ of the State overstepping its jurisdiction and interfering with the functions of another organ of the State. Similarly, in *State of Himachal Pradesh Vs. A Parent of a Student of Medical College, Simla and Others*, , the order of the High Court of the Himachal Pradesh directing the filing of an affidavit setting out what action had been taken towards implementation of the recommendations contained in the report of the Anti-Ragging Committee, was set aside and it was held that the order of the High Court so directing was wholly unsustainable even though made in a public interest litigation. It was held that the direction of the High Court amounts to compelling the Government to initiate legislation and which the Court was not entitled to do. The Supreme Court held that it is entirely a matter for the executive branch of the Government to decide whether or not to introduce a particular legislation and is not a matter which is within the sphere of the functions and duties allocated to the judiciary under the Constitution. It was yet further held that the Courts cannot even indirectly require the executive to introduce a particular legislation or the legislature to pass it and the Courts cannot assume to itself a supervisory role over the law making activities of the Executive and the Legislature.

4. Reference may also be made to *Common Cause (A Regd. Society) Vs. Union of India (UOI) and Others*, holding that Courts cannot create rights where none exist nor they can go on making orders which are incapable of enforcement or direct legislation or proclaim that they are playing the role of a law maker, merely for an exhibition of judicial valour.

5. Mention may lastly be made to the judgment of the Full Bench of this Court in *Common Cause Vs. Union of India*, affirmed by the Supreme Court in the judgment by the same name reported in *Common Cause Vs. Union of India (UOI) and Others*, , also holding that no mandamus could be issued by the Courts for bringing into force of legislation. A good discussion on the subject and reiteration of the principle can also be found in the recent judgment of the Supreme Court in *V.K. Naswa Vs. Home Secretary, Union of India (UOI) and Others*, where it was held that Courts have a very limited role and in exercise of that, it is not open to have judicial legislation. It was further held, neither the Courts can legislate nor the Courts have any competence to issue directions to the legislature to enact the law in a particular manner.

6. The counsel for the respondent appearing on advance notice has also invited our attention to *Pannalal Bansilal Patil and others etc. Vs. State of Andhra Pradesh and another*, where it was inter alia held as under:-

12. The first question is whether it is necessary that the legislature should make

law uniformly applicable to all religious or charitable or public institutions and endowments established or maintained by people professing all religion. In a pluralist society like India in which people have faith in their respective religions, beliefs or tenets propounded by different religions or their off-shoots, the founding fathers, while making the Constitution, were confronted with problems to unify and integrate people of India professing different religious faiths, born in different castes, sex or sub-sections in the society speaking different languages and dialects in different regions and provided secular Constitution to integrate all sections of the society as a united Bharat. The directive principles of the Constitution themselves visualize diversity and attempted to foster uniformity among people of different faiths. A uniform law, though is highly desirable, enactment thereof in one go perhaps may be counter-productive to unity and integrity of the nation. In a democracy governed by Rule of Law, gradual progressive change and order should be brought about. Making law or amendment to a law is a slow process and the legislature attempts to remedy where the need is felt most acute. It would, therefore, be inexpedient and incorrect to think that all laws have to be made uniformly applicable to all people in one go. The mischief or defect which is most acute can be remedied by process of law at stages.

7. We therefore do not find any ground to entertain this petition which is dismissed.