

(2002) 03 AHC CK 0009
In the Allahabad High Court
Case No : Writ Petition No. 1522 (MB) of 2002

Ram Chander Bhartiya, Advocate	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 22-03-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 3 AWC 2072 : (2002) 92 FLR 213

Hon'ble Judges : Jagdish Bhalla, J; Bhanwar Singh, J

Bench : Division Bench

Advocate : Ram Chander Bhartiya, for the Appellant; C.S.C., for the Respondent

Judgement

Jagdish Bhalla and Bhanwar Singh, JJ.—Certain issues create a platform on which someone can just rise and emerges into instant limelight. This practice of indulging into sensitive and important matters should be checked and curbed with a firm will so that the habit of sensationalisation is put to an end.

2. The dispute regarding Ram Janam Bhumi and Babri Masjid is one of such matters, accordingly petitions are being filed before this Court. Writ Petition No. 1197 (M/B) of 2002, Sushil Vidyarthi v. Union of India and Ors., was filed before this Court by a journalist only few days ago. Now instead of journalist, a member of the Bar from Ajmer, Rajasthan has come before this Court with a prayer that a direction be issued for the construction of Babri Masjid at Ayodhya on the disputed site. It has been further prayed that "Ram Chabutra" and "Kaushalya Rasoi" be also constructed where the same were situated and after the construction of such Masjid, an arrangement for security be made and in fact "Ram Mandir" has to be constructed there, permission be also granted for the same.

3. Apex Court and this Court in various public interest litigations have come out with a specific direction to the extent that the petitioner, particularly if he is a practicing lawyer, his responsibilities increase and he must make his earnest

efforts before filing public interest litigation.

4. Petitioner contended that he is a practicing advocate at Ajmer and, therefore, he has a right under Article 226 of the Constitution of India to present this petition but he failed to elaborate his case because according to him, he has not brought his books. Further, in spite of the knowledge that the title dispute is going on before a special Bench of Hon''ble three Judges of this Court, which has already ordered for day-to-day proceedings with regard to the recording of evidence, the petitioner further submits that he is an Indian citizen, therefore, his rights have been infringed by not constructing the Babri Masjid. It is contended by the petitioner that there is violation of principles of natural justice by not permitting construction of Babri Masjid, Kaushalya Ki Rasoi, Ram Chabutra and finally the Ram Temple.

5. Petitioner, in support of his contention, relies upon Dr M. Ismail Frauqui and Others Vs. Union of India (UOI) and Others, and particularly on paragraphs 33, 40 and 159.

6. The above judgment indicates for the maintenance of the status quo, in spite of the same, the petitioner wants status quo of the land in dispute to be changed.

7. It may be mentioned here that during the course of arguments, petitioner has informed that he has put in two years of practice after his retirement. The way the petitioner had argued the matter, it is unfortunate, we cannot restrain ourselves to observe that the petitioner lacks even basics of law.

8. It is unfortunate that the petitioner during the course of the arguments wanted to use this as forum for his fiery speech by charging the atmosphere and distorting the harmony between the two communities. We restrain ourselves from reducing the same in writing.

9. The petitioner has pressed no other point.

10. A Division Bench of this Court in which one amongst us (Hon''ble Jagdish Bhalla, J.) was a member, has pronounced its judgment on 11.3.2002 in W. P. No. 1197 (M/B) of 2002 dealing with the approach and duties of the members of the Bar with regard to the filing of Public Interest Litigation wherein it has been observed as under :

"In all litigation particularly in Public Interest Litigation both the Bar and Bench have certain relationship and responsibility for administration of justice as when Both Bar and Bench respect each other''s purposes and responsibilities and when both the Bar and the Bench are conscious of each other''s limitations. A Bar functions best when its speech is untrammelled, but guided by deep scholarship. Learned member of the Bar serves his institution best when he knows that it is not his job to win cases by all means but to assist the Court with all his mastery on facts and law. A Judge serves the Institution best when he does not fear to hear but does not decide out of fear, when he hears with compassion but does not decide out of favour. The legal fraternity is a solemn, serious and a noble

profession, all those who belong to it are honourable members, therefore, the gravity of the profession is to be maintained by its members and their exemplary conduct both in and out of the Court, is mandatory and this in fact is a morale for the society at large, therefore, their contribution to the administration of justice is immense.

33. The polity assured to the people of India by the Constitution is described in the Preamble wherein the word "Secular" was added by the 42nd Amendment. It highlights the fundamental rights guaranteed in Articles 25 to 28 that the State shall have no religion of its own and all persons shall be equally entitled to freedom of conscious and the right freely to profess, practice and propagate religion of their own choice, in brief, this is the concept of secularism as a basic feature of the Constitution of India and the way of life adopted by the people of India as their abiding faith and creed. M. C. Setalvad in Patel Memorial Lectures, 1985, on Secularism, referring to the Indian concept of secularism, stated thus :

".....The coming of the partition emphasised the great importance of secularism, notwithstanding the partition, a large Muslim minority, constituting a tenth of the population, continued to be the citizens of independent India. There were also other important minority groups of citizens. In the circumstances, a secular constitution for independent India, under which all religions could enjoy equal freedom and all citizens equal rights, and which could weld together into one nation the different religious communities, became inevitable."

".....The ideal, therefore, of a secular State in the sense of a State which treats all religions alike and displays a benevolent neutrality towards them is in a way more suited to the Indian environment and climate than that of a truly secular State."

".....Secularism, in the Indian context, must be given the widest possible content. It should connote the eradication of all attitudes and practices derived from or connected with religion which impede our development and retard our growth into an integrated nation. A concerted and earnest endeavour, both by the State and citizen, towards secularisation in accordance with this wide concept alone lead to the stabilisation of our democratic State and the establishment of a true and cohesive Indian nationhood."

40. It is clear from the constitutional scheme that it guarantees equality in the matter of religion to all individuals and groups irrespective of their faith emphasising that there is no religion of the State itself. The Preamble of the Constitution read in particular with Articles 25 to 28 emphasises this aspect and indicates that it is in this manner the concept of secularism embodied in the constitutional scheme as a creed adopted by the Indian people has to be understood while examining the constitutional validity of any legislation on the touchstone of the Constitution. The concept of secularism is one facet of the right to equality woven as the central golden thread in the fabric depicting the pattern of the scheme in our Constitution.

159. Before we pass final orders, some observations of a general nature appear to be in order. Hinduism is a tolerant faith. It is that tolerance that has enabled Islam, Christianity Zoroastrianism, Judaism, Buddhism, Jainism and Sikhism to find shelter and support upon this land. We have no doubt that the moderate Hindu has little taste for the tearing down of the place of worship of another to replace it with a temple. It is our fervent hope that moderate opinion shall find general expression and that communal brotherhood shall bring to the dispute at Ayodhya an amicable solution long before the Courts resolve it."

11. From the perusal of the above judgment and in light of the arguments advanced by the petitioner, it is crystal clear that the petitioner has not made his earnest efforts with regard to the preparation of the case and if such a conduct of the member of the bar is permitted to carry on, it will dilute the gravity of the public interest litigation. The way the case has been argued, puts a question mark on the sincerity of the petitioner. He is not even aware of the rules regarding filing of the Public Interest Litigation.

12. We further find that the petitioner has not taken any pain to prepare the case. He has shown ignorance to the law and the facts, which clearly shows that the petitioner wanted a short cut to come in the headlines of the newspapers and was interested in gaining cheap popularity.

13. This Court is answerable to us judicial conscious and to the society as well. Therefore, the time has come to deal with such matters with an Iron hand. Since the petitioner has failed to address this Court on his locus standi and merit of the case and hardly argued the case and further has relied upon only paragraphs 33, 40 and 159 of the judgment (supra) ignoring the ratio laid down In the judgment, we are of the considered opinion that such a petitioner cannot be permitted to file such frivolous petitions and we would be falling in our duties if exemplary cost is not imposed.

14. In the premise, we find that no interference is warranted under Article 226 of the Constitution of India, therefore, the writ petition is dismissed in limine with a cost of Rs. 10,000 upon the petitioner who is directed to deposit this amount in this Court within a period of two months, which would be transferred to the U. P. State Legal Aid Cell. If the amount is not deposited by the petitioner the Registrar of this Court will ensure recovery of the same, in accordance with law.

15. In the above matter, the petitioner had appeared in person, Shri Sharad Kumar Srivastava, learned standing counsel for Union of India and Shri A. K. Verma, learned additional chief standing counsel along with other standing counsel for the State of U. P.