
(1999) 05 AHC CK 0170
In the Allahabad High Court
Case No : C.M.W.P. No. 31801 of 1992

Renaissance Forum, Allahabad

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision : 28-05-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1), 27, 29, 30

National Commission for Minorities Act, 1992 — Section 2(C), 3, 9(1), 9(4)

Citation : (1999) 3 AWC 2103

Hon'ble Judges : R.K. Singh, J; Binod Kumar Roy, J

Bench : Division Bench

Advocate : H.S. Kulshrestha, for the Appellant; U. N. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Binod Kumar Roy and R. K. Singh, JJ.—On going through this writ petition and the supplementary affidavit, it transpires that the real prayer of the petitioner is to quash the National Commission for Minorities Act. 1992 (Parliament Act No. 19 of 1992) on the ground that it is violative of the Preamble and Articles 14 16(1) 51A(E and F) of the Constitution of India, its object being vague and not specific.

2. Following facts have been stated in the writ petition and its supplementary affidavit. The petitioner is a society registered under the Registration of Societies Act, 1860. It is a forum of intellectuals, whose main objective is to work for the unity and integrity of the nation and develop high values of life of all citizens in accordance with our rich cultural heritage and socio-economic development irrespective of caste, creed, religion, etc. It is a historical fact that in 1947, partition of India took place on the basis of Hindu and Muslim majority areas. Pakistan was carved out to give home to Muslims, who declared it an Islamic State. India, however, remained a secular State giving all its citizen equal rights irrespective of religion, language or caste, etc. and none was discriminated or favoured because of his religion or language. The makers of the Constitution of

India enacted articles to give effect to its preamble, guaranteed fundamental rights to all citizens, irrespective of religion, caste or language, wherever they considered necessary to give any special status to any class of people duly incorporated exemptions but nowhere except in Articles 29 and 30, any exemption was made for religious minority rightly so because after the trauma of partition of country on religious basis, no provision could be made which may give rise to further partition ; by 42nd Amendment Act, 1976 the words "Socialist and Secular" were added in the preamble of the Constitution in order to emphasize and strengthen the secular character of the Constitution which is its spirit and spell out what we wished India to be and make efforts to achieve it ; it is the ", fundamental duty of every citizen to promote harmony and spirit of common brotherhood among all its citizens transcending religious, linguistic or regional diversities under Article 51A of the Constitution ; during 1991 national elections all political parties tried to grab the vote banks by promising many things against the national interest to please certain sections of society and they virtually divided Indian citizens on religion and caste basis ignoring its adverse effect on the unity and integrity of India ; Congress-I through its election manifesto promised to give a statutory status to minority commission with obvious purpose to secure Muslims vote--the Muslims being in sizeable number and can tilt the fortune of any political party ; under such political situation when divisive forces are on rise, thus it is the constitutional obligation of all of us to put a stop to such tendencies and this writ petition is an effort in that direction : prior to February, 1992, the Minority Commission was in existence which used to submit a report about minorities to the Government of India for consideration but it did not have any statutory status but was serving the purpose of keeping the Government informed about the problems, if any, of the minorities without causing any annoyance or difficulty to majority community. The National Commission for Minorities Bill. 1992 was introduced and duly passed by Lok Sabha and Rajya Sabha pursuant to the election promise made by Congress-I specially to Muslims without indicating the basic purpose and satisfying any weakness of existing or shortcoming desired to be rectified by this Bill and this Bill lacks clarity, unambiguousness and well defined objectives required to be achieved ; the Bill strikes at the concept of National unity and integrity by recognising minority and majority rights more than what was given in the Constitution : the Bill does not define the term "minority" though it is primarily and solely for the minority community living in India and states that it means community notified as such by the Central Government but without specifying any guidelines to be adopted by the Central Government ; this cannot be a matter of choice by the Central Government and thereby Section 2(c) is excessive and arbitrary ; the Constitution recognised religious and linguistic minority only and that too for the limited purpose to establish and administer educational institutions ; Article 350 (A) and (B) of the Constitution make provision for appointment of special officer to monitor the safeguards provided for linguistic minority and the impugned Bill cannot be above that Article and it is, therefore, clear that it is not for linguistic minority but for religious minority

only ; makers of the Constitution never felt the necessity of giving any special status to religious minority : Section 3(2) which talks of composition of the Commission provides for appointment of chairperson and six other persons as its members, out of which five including chairperson has to be of the minority community thereby it has to be managed by minority community for safeguarding its interest only and thereby it will certainly work with bias in favour of the minority and not in a true secular way ; Section 9 defines functions of the Commission ; Section 9(1)(b) authorises it to monitor the work of safeguards provided in the Constitution without spelling out which safeguard is against the Constitution ; Sections 9(1)(d) to (e) are against the secular spirit of the Constitution and superfluous inasmuch as it is presumed that minority community are, not having enough protection or safeguards or deprived of their right as citizen or are being discriminated which is wholly wrong inasmuch as all rights provided in the Constitution or in other laws are equally available to all citizens irrespective of religion ; this also amounts to casting aspersion in the capability and fairness of courts to enforcement fundamental rights to the citizen and is thereby derogation of courts : Section 9(1)(f) is discriminatory and violative of Article 14 in ignoring others and making statutory provision for minority is discriminatory and hence violative of Article 14 ; Section 9(4) gives powers of civil court to the Commission which is against the principles of natural justice ; persons belonging to minority community will sit and judge on matters in which minority community is an interested party, which is against the principles of natural justice ; the majority community may not have faith in the fairness of the commission for reasons the aforementioned ; it will create complications wherever administrative authority in case of any trouble are summoned to give evidence on oath or produce document ; it creates duality by establishing two courts for same purpose and thereby barred in law ; Section 10 provides for finance and account of the Commission* ; the whole expense of the Commission will be borne by citizens of India which is in contravention of Article 27 because taxes paid by the citizen will be used for promotion of religious minority ; the appointment of its members and staff is a public appointment whose expenses are to be borne by public fund whereas no public appointment can be reserved on the sole basis of minority status and proviso to Section 3(2) deflates its secular spirit and hence violative of Article 16(1) of the Constitution ; the provisions of the Act are not applicable to the Hindus who are in minority in J&K vide para 1 (2) who are forced to leave their houses while no such situation exists anywhere in India in relation to minorities ; the subject of giving constitutional right to minority community is neither covered by Seventh Schedule nor under any Article of Constitution and as such the Parliament has acted beyond its authority in making law of National Commission for Minority thereby the Act is liable to be struck down ; during last few years it was observed that political parties are preaching religious and caste appeasement in the garb of uplifting them ignoring the fact that it is sowing seeds of disintegration of the nation and under such circumstances a patriotic citizen is not supposed to be a silent spectator but to plead before the Judiciary to rescue

the nation within the constitutional frame work.

3. Referring to and relying upon the pleadings set forth in the writ petition and its supplementary. Sri H. S. Kulshrestha, learned counsel for the petitioner, contended that the Act be declared unconstitutional ; and/or its various provisions referred to in the pleading, be struck down. After the arguments were concluded and order reserved on 14.12.98. Sri Kulshrestha, learned counsel for the petitioner also submitted a written arguments referring to the following decisions of the Supreme Court in Seth Nand Lal and Another Vs. State of Haryana and Others, ; State of Karnataka Vs. Union of India (UOI) and Another, ; Union of India v. Harbhajan Singh Dhillon, (1972) 83 ITR 582 (SC); Sat Pal and Co. and Others Vs. Lt. Governor of Delhi and Others, , and Janata Dal Vs. H.S. Chowdhary and Others,

4. We remind ourselves of the decision of the Apex Court in Misbah Alam Shaikh Vs. State of Maharashtra and another, , wherein following observations were made in regard to the National Commission for Minorities and some of the sections of the Act aforementioned :

".....Section 3 of the National Commission for Minorities Act. 1992, for short the Act, provides that the Central Government shall constitute a body to be known as "the National Commission" for Minorities to exercise the powers conferred on, and to perform the functions assigned to it, under the Act. Section 9 of the Act in Chapter III envisages the functions of the Commission. The Commission shall perform all or any of the following functions, namely, (a) to evaluate the progress of the development of minorities under the Union and States ; (b) to monitor the working of the safeguards provided in the Constitution and in laws enacted by Parliament and the State Legislatures ; (c) make recommendations for the effective implementation of safeguards for the protection of the interests of minorities by the Central Government or the State Governments,.....". Sub-section (2) postulates that the Central Government shall cause the recommendations referred to in clause 9 (c) of sub-section (1) to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for non-acceptance, if any, of any of such recommendations. Thus, it could be seen that under the statute, as rightly conceded by the learned counsel for the appellant, there is no statutory compulsion, on the part of the State Government, to constitute a Commission called "the Minority Commission" in the State. On the other hand, by operation of Section 3 read with Section 9, it is the duty of the Central Government to constitute a National Commission and it shall be the duty and responsibility of the National Commission to ensure compliance of the principles and programmes evaluated in Section 9 of the Act protecting the interest of the minorities for their development and working of the safeguards provided to them in the Constitution and the law enacted by the Parliament as well as the State Legislatures. The object, thereby, is to integrate them in the national main stream in the united and integrated Bharat providing facilities and

opportunities to improve their economic and social status and empowerment....."

5. The above observations/ findings recorded by the Apex Court renders many of the submissions made by the learned counsel as devoid of any substance.

6. We do not find any merit in the points taken for striking down the Act. The Parliament was fully competent to enact it. The impugned sections. In our view, are not vague and violative of any provision of the Constitution of India and we are unable to grant the desired relief to the petitioner.

7. In the result we dismiss this writ petition.