

(1988) 09 RAJ CK 0033

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1925 of 1987 and No. 127 of 1988

Surya Narayan Choudhary and Another

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 29-09-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 17, 35, 38

Citation : (1988) 2 RLW 31 : (1988) 2 WLN 246

Hon'ble Judges : J.S. Verma, C.J; Farooq Hasan, J

Bench : Division Bench

Judgement

Jagdish Sharan Verma, C.J.—It is tragic that on the eve of Gandhi Jayanti we are debating a Harijans right to enter a public temple for worship as an equal; and directions of the court should be needed for enforcement of this right to equality. All men are born equal and the classification between them thereafter is man made and artificial against the divine dictate. To present them as unequals before God is, therefore, injustice and an insult to our Maker besides being contrary to the guarantee and mandate of equality in our Constitution and a basic human right. To name them "Harijans" and then discriminate them for entry into a public temple to worship "Hari" is not merely violation of a Constitutional Guarantee or insult to them but sheer hypocrisy and insult to "Hari" rendering their name a misnomer. This is the unfortunate scope of these petitions.

2. Both these petitions have been filed in public interest and are for ventilating the same grievance. Both petitioners are practicing Advocates who have tried to highlight the hostile discrimination practised against the Harijans in the matter of entry into the public temple of Shri Srinathji at Nathdwara. The prayer made is for suitable directions to the State Government for ensuring discontinuance of this discrimination of the Harijans and strict action against the offenders.

3. Shri Surya Narayan Choudhary (petitioner in writ petition No. 1925/87) appeared in person in his writ petition and also on behalf of the petitioner in the

other writ petition. After mentioning the discrimination practised against Harijans he stated that on Ghandi Jayanti, October 2, 1988 he with Swami Agnivesh plan to visit the Nathdwara Temple for worship along with a batch of Harijans. He prayed for suitable directions to the State Government to ensure that the entry to Harijans in the temple is not denied by imposing any discriminatory conditions which are not applied to the caste Hindus. He referred to a news item (Ex. 7) which reports an interview of Rakesh Baba son of Tilkait of the Nathdwara Temple for showing the discriminatory treatment of the Harijans. According to this news item the Harijans are permitted to enter the temple only after being purified by requiring them to wear "Kanthimala" and sprinkling them with "Gangajal" (Ganges water) and giving them "Tulsidal". Shri Choudhary contended that this practice of purification of the Harijans prior to entry in the temple amounts to practicing untouchability and is also discriminatory. Shri Choudhary expressed regret and shared the blame for not stopping this discrimination when he was a Minister in this State about a decade back.

4. The learned Advocate General appearing on behalf of the State Government assured as that the State Government is fully committed to the eradication of untouchability and it will discharge all its duties and obligations under the law. The learned Advocate General how ever added that the proposed visit to the temple on Gandhi Jayanti or any other day should be made in the ordinary course and not in a manner which would create any law order problem for the State Government. The learned Advocate General repeatedly assured us that the State Government is fully committed to the principles enshrined in the Constitution of India and would take every step to stop any discrimination practised by any one against the Harijans. The only anxiety of the learned Advocate General was that this act of the proposed march to the temple on Gandhi Jayanti day should not lead to disturbance of the peace and tranquility of the locality or create any law and order problem for the State Government.

5. It is indeed pity that forty years after the father of the Nation laid down his life preaching abolition of untouchability and practicing it, we should still be debating such matters and directions of the court should be necessary to enforce compliance of the salutary provision of untouchability. This shows that mere enactment of such a law or guaranteeing a right in the Constitution of India is not enough and the change needed is really in our hearts and not elsewhere. It is the willing acceptance of the society which alone is the sure guarantee of eradication of any social evil. The acceptance must be without any reservation and it must be real and not mere camouflage. The problem facing us is not the result of legal non-acceptance of equality of Harijans but of hesitation and refusal to accept honestly even that which we cannot openly deny or defy. It is, therefore, necessary that the maxim that all men are born free and equal must be accepted by the society from within and not merely by the State agency. The State agency works only through human agency.

6. It is the personnel constituting the State agency and entrusted with the task

of enforcement of the State policy who must honestly accept this fact to make implementation of the policy real. It is time such acceptance became universal and any deviation is treated with the scorn of the society which it deserves and dealt with sternly with a firm hand. The promise held out in the Constitution can be realised only then.

7. It would be instructive to refer to certain provisions to indicate the extent to which care was taken by the framers of our Constitution to provide not only for abolition of untouchability but to also ensure its total eradication. Amongst the fundamental rights under the heading "right to equality is Article 17 which provides for abolition of untouchability. The framers were not content merely with saying that untouchability is abolished but they went further and said that "its practice in any form is forbidden"; and that "enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law. Thus Article 17 itself declared any such act to be an offence punishable in accordance with law instead of being content with forbidding with practising of untouchability in any form. In accordance with the directive principle contained in Article 35(a)(ii) of the Constitution the Parliament enacted the Untouchability (Offences) Act, 1955 renamed as the Protection of Civil Rights Act to prescribe punishment for the preaching and practice of untouchability and matters connected therewith. Article 38 enjoins upon the State to secure a social order for promotion of the welfare of the people and requires that the State shall strive to minimise the inequalities not only amongst individuals but also amongst groups of people and endeavour to eliminate inequality in status, facilities and opportunity. Article 46 requires the State to protect the Scheduled Castes, Scheduled Tribes and other weaker sections from social injustice and all forms of exploitation. Thus the fundamental right of equality guaranteed in Articles 14 & 15 and reinforced for the Harijans by abolition of untouchability in Article 17; and the Directive Principles of State Policy laid down in Articles 35, 38 & 46 impose an inalienable obligation on the State to ensure that this right to equality of the Harijans and other weaker sections does not remain an empty formality or a pious wish alone but assumes vigour and becomes a vibrant right, the protection and enforcement of which is the paramount duty of the State.

8. The Nathdwara Temple Act, 1959 was enacted to provide for the better administration and governance of the temple of "Shri Srinathji" at Nathdwara near Udaipur. This temple is admittedly a public temple. Administration of the temple vests in the Board constituted under the Act and the Collector of Udaipur District is an ex-office member of the Board. There are provisions in the Act which empower the State Government to appoint the Chief Executive Officer of the temple; constitute an Executive Committee for the efficient and proper performance of the secular duties relating to the temple; call for information and direct inspection; and obtain annual report on the administration of the affairs of the temple. In short, there is provision for general superintendence of the State Government to ensure that the administration of the temple is carried on properly as required by law. It is, therefore, implicit that the State Government

must, ensure that there is no infringement of any constitutional obligation or any other provision of law in administration of the affairs of the temple. This is an additional reason to hold that the State Government is duty bound to ensure that no hostile discrimination or untouchability is practised by the authorities carrying on the administration of the temple. The question raised, therefore, has to be viewed in this perspective.

9. As earlier stated the learned Advocate General appearing on behalf of the State categorically accepted this position and assured us of the State Government's honesty of purpose in preventing the discrimination of any Harijan devotee in any manner for the purpose of entry into the Nathdwara Temple for worship. In view of this assurance given categorically on behalf of the State Government the only surviving task for us is to give the directions which we consider appropriate for ensuring that here after no discrimination is made against the Harijans for entry into the Nathdwara temple for worship. These directions shall apply not only on the next Gandhi Jayanti, October 2, 1988 but continuously here after.

10. Every devotee including a Harijan who wants to enter the Nathdwara Temple for worship will be permitted by the authorities concerned to enter it in accordance with the general practice and regulations of entry applicable to everyone else. The Harijans or members of any other weaker section of society will not be subjected to any additional restriction or condition which does not apply to others. In other words, the entry of all devotees for worship into that temple would be regulated by the same conditions which apply equally to everyone without any additional condition for entry being imposed on any Harijan devotee. It is further directed that the reported and much publicised practice of purification of Harijans alone before permitting them to enter in the temple for worship by making them wear "Kanthimala", sprinkling them with "Gangajal" and giving them "Tulsidal shall be discontinued forth with since this condition imposed on Harijan devotees alone is discriminatory. This practice violates the right of equality guaranteed to the Harijans by Articles 14, 15 & 17 of the Constitution. The State Government must ensure discontinuance of this practice forthwith, if the same is still continuing. The State Government must also take strict steps to ensure that there is no further mockery of this constitutional guarantee and the offenders, if any, are promptly dealt with in accordance with law to prevent recurrence of any incident in future. We direct the State Government, accordingly.

11. In our opinion, the above direction to prevent discrimination, if any, of the Harijan devotees in the matter of entry into the Nathdwara temple is sufficient to dispose of these petitions. The State Government must issue the necessary instructions to all concerned officials for ensuring full and faithful compliance of these directions; and due compliance must also be ensured by it. No particular direction for the proposed entry of the Harijan devotees on October 2, 1988 is required to be given. The State Government shall take the necessary steps for

maintenance of law and order while ensuring that there is no discrimination practised in any manner while permitting entry into the temple. It is also expected that no attempt will be made by any one professing public interest to use the Harijans as pawns on the political chess board; and they will be assisted to exercise their right in true spirit of public service in which this issue has been raised. We need hardly add (hat the exercise of this right by a section of the people must not result in disturbing public peace and tranquility in the locality.

12. The most befitting tribute we can pay to the Father of the Nation on Gandhi Jayanti is to banish this social anachronism from our lives and to ensure entry into this Public Temple of the Harijan devotees for worship mingled with the main stream of devotees including caste Hindus breaking all artificial human shackles which had been snapped long back by Mahatma Gandhi who preferred to live in the Harijan Colony spurning the comforts of palaces available to him. It is in this manner we can discharge our pious obligation towards the Father of Nation. We are confident, the State Government will spare no effort to discharge its obligation.

13. We direct accordingly. No costs.