

SUPREME COURT OF INDIA

V.K. Naswa

Vs.

Home Secretary, U.O.I.

Writ Petition (Civil) No.533 of 2011

(Dr. B.S. Chauhan and Swatanter Kumar JJ.)

09.01.2012

ORDER

1. This writ petition has been filed making grievance that the respondents, namely, Yog Guru Baba Ramdev; Shri Anna Hazare, Mrs. Kiran Bedi and others have, on several occasions insulted the National Flag and violated the norms of waiving of National Flag, as provided in the Flag Code 2002. Thus, the petitioner has sought relief that a sum of Rs.10,00,000,00/- (Rupees Ten crores) be recovered from Baba Ramdev for misusing National Flag for gaining undue mileage benefiting his commercial ends (yoga business) as well as the political gain drive during agitations; Shri Anna Hazare and others be directed to pay a sum of Rs.1,00,000,00/- (Rupees Ten crores) to the Prime Minister's Relief Fund for using/misusing National Flag for gaining the political mileage during agitations, and further to issue direction to the Central Government through Ministry of Law Justice to revise the Flag Code of India 2002 and amend the same incorporating the amendment suggested by the petitioner himself.

2. The petitioner appears in person and on being asked by the court it has been pointed out by him that against the above referred respondents he has filed the criminal complaints before the police authorities and he has been pursuing the said remedy simultaneously.

3. The issue involved in the case has been dealt with by this Court elaborately in Anr. AIR 2004 SC 1559, interpreting the clauses contained in the Flag Code 2002 and explained as under what circumstances and in what manner the National Flag

can be hoisted by the individuals. The Flag Code is divided into 3 parts. Part II provides for the mode and manner of hoisting/displaying/use of National Flag by Members of Public, Private Organisations, Educational Institutions etc. From reading of clause 2.1 of Section 1 appear in Part II of the Flag Code, it is evident that there is no restriction on the display of National Flag by members of general public, private organizations and educational institutions etc. except to the extent provided in the Emblems and Names (Prevention of Improper Use) Act, 1950 and Prevention of Insults to National Honour Act, 1971 and any other law enacted on the subject. This Court has further held that Flag Code is not the law within the meaning of Article 13(3)(a) of the Constitution of India. However, right to fly National Flag is a fundamental right. Further the Flag Code provides guidelines to be observed for preservation of dignity and respect to the National Flag.

4. In view of the above, the National Flag is both a benediction and a beckoning. Thus, in case a person shows any kind of disrespect to the National Flag or does not observe the terms contained in the Code, legal action may be taken against him under the relevant statutory provisions. However, these are the questions of facts as to whether on a particular event a particular person has shown any kind of disrespect to the National Flag. For that purpose, the petitioner has already filed complaint before the authorities concerned. Thus, he cannot pursue the remedy simultaneously by filing the writ petition and on that count the petition is liable to be dismissed. More so, such a factual controversy cannot be examined in a petition under Article 32 of the Constitution of India.

5. The petitioner-in-person has emphasised that he has approached this Court to issue directions to the Central Government through Ministry of Law Justice to amend the law in this regard and in the alternative, this court itself may issue appropriate directions in this regard.

It is a settled legal proposition that the court can neither legislate nor issue a direction to the Legislature to enact in a particular manner.

6. In *Mullikarjuna Rao Ors. Etc. Vs. State of Andhra Pradesh Ors. etc.*, AIR 1990 SC 1251; and *Ors.*, AIR 1993 SC 2285, this Court has held that Writ Court, in exercise of its power under Article 226, has no power even indirectly require the Executive to exercise its law-making power. The Court observed that it is neither legal nor proper for the High Court to issue direction or advisory sermons to the Executive in respect of the sphere which is exclusively within the domain of the Executive under the Constitution. The power under Article 309 of the Constitution to frame rules is the legislative power. This power under the Constitution has to be

exercised by the President or the Governor of a State, as the case may be. The Courts cannot usurp the functions assigned to the Executive under the Constitution and cannot even indirectly require the Executive to exercise its law-making power in any manner. The Courts cannot assume to itself a supervisory role over the rule-making power of the Executive under Article 309 of the Constitution.

7. While deciding the said case, the Court placed reliance on a large number of judgments, particularly *M/s. Narinder Chand Hem Raj Ors. v. Lt. Governor, Administrator, Union Territory, Himachal Pradesh Ors.*, AIR 1971 SC 2399, where it has been held that legislative power can be exercised only by the legislature or its delegate and none else.

8. In *State of Himachal Pradesh v. A Parent of a Student of Medical College, Shimla Ors.*, AIR 1985 SC 910, this Court deprecated the practice adopted by the Courts to issue directions to the legislature to enact a legislation to meet a particular situation observing :

...The direction given by the Division Bench was really nothing short of an indirect attempt to compel the State Government to initiate legislation with a view to curbing the evil of ragging, for Otherwise it is difficult to see why, after the clear and categorical statement by the chief Secretary on behalf of the State Government that the Government will introduce legislation if found necessary and so advised, the Division Bench should have proceeded to again give the same direction. Thus the Division Bench was clearly not entitled to do. It is entirely a matter for the executive branch of the Government to decided whether or not to introduce any particular legislation.

9. In *Asif Hameed Ors. v. State of Jammu Kashmir Ors.*, AIR 1989 SC 1899, this Court while dealing with a case like this at hand observed:

While doing so, the Court must remain within its self-imposed limits. The Court sits in judgment on the action of a co-ordinate branch of the Government. While exercising power of judicial review of administrative action, the Court is not an Appellate Authority. The Constitution does not permit the Court to direct or advise the Executive in matter of policy or to sermonize qua any matter which under the Constitution lies within the sphere of Legislature or Executive. (Emphasis added)

10. In *Union of India Anr. v. Deoki Nandan Aggarwal*, AIR 1992 SC 96, this Court similarly observed :

It is not the duty of the Court either to enlarge the scope of the legislation.....The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the Court.

11. Similarly in *Anr.*, AIR 1999 SC 1351, this Court held that Court cannot fix a period of limitation, if not fixed by the legislature, as the Courts can admittedly interpret the law and do not make laws. The Court cannot interpret the statutory provision in such a manner which would amount to legislation intentionally left over by the legislature.

12. A similar view has been reiterated by this Court in *Union of India v. Association for Democratic Reforms Anr.*, AIR 2002 SC 2112, observing that the Court cannot issue direction to the legislature for amending the Act or Rules. It is for the Parliament to amend the Act or Rules.

13. In *District Mining Officer Ors. v. Tata Iron Steel Co. Anr.*, (2001) 7 SCC 358, this Court held that function of the Court is only to expound the law and not to legislate.

14. Similarly, in *Anr.*, (1989) 4 SCC 187, this Court held that Court cannot direct the legislature to enact a particular law for the reason that under the constitutional scheme the Parliament exercises sovereign power to enact law and no outside power or authority can issue a particular piece of legislation. (See also: *State of Jammu Ors.*, AIR 1992 SC 1546).

15. *Anr.*, AIR 2003 SC 2612, this Court held that if the Court issues a direction which amounts to legislation and is not complied with by the State, it cannot be held that the State has committed the Contempt of Court for the reason that the order passed by the Court was without jurisdiction and it has no competence to issue a direction amounting to legislation.

16. The issue involved herein was considered by this Court in *Ors.*, AIR 2010 SC 2532. The Court elaborately explained the scope of separation of powers of different organs of the State under our Constitution; the validity of judicial legislation and if it is at all permissible, its limits; and the validity of judicial activism and the need for judicial restraint, etc. The Court observed:

At the outset, we would say that it is not possible for this Court to give any direction for amending the Act or the statutory rules. It is for the Parliament to amend the Act and the Rules.

17. In *State of U.P. Ors. v. Jeet S. Bisht Anr.*, (2007) 6 SCC 586, this Court held that issuing any such direction may amount to amendment of law which falls exclusively within the domain of the executive/legislature and the Court cannot amend the law.

18. In *Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers Ors.*, (2011) 8 SCC 568, this Court while dealing with the issue made the observation that in exceptional circumstances where there is inaction by the executive, for whatever reason, the judiciary must step in, in exercise of its Constitutional obligations to provide a solution till such time the legislature acts to perform its role by enacting proper legislation to cover the field.

(See also: *Vishaka Ors. v. State of Rajasthan Ors.* AIR 1997 SC 3011; *Ors.*, AIR 2008 SC 2116; and *Ors.*, AIR 2009 SC 2266)

19. Thus, it is crystal clear that the Court has a very limited role and in exercise of that, it is not open to have judicial legislation. Neither the Court can legislate, nor it has any competence to issue directions to the legislature to enact the law in a particular manner.

20. In view of the above, the petition lacks merit. Facts of the case do not warrant any interference by this Court. In such a fact- situation, no relief can be granted to the petitioner. The writ petition is, accordingly, dismissed.