SUPREME COURT OF INDIA

Jafar Imam Naqvi

Vs.

Election Commission of India

W.P.(Civil)No.429 of 2014

(Dipak Misra,J.)

15.5.2014

JUDGMENT

Dipak Misra, J.

1. The petitioner, a practising advocate of this Court, as*pro bone publico* has preferred this writ petition with Article 32of the Constitution with the following prayers:"a) Issue a writ of mandamus in public interest or any other appropriate writ, order, direction, commanding respondent to take stern action against everyone and anyone found guilty as per law in view of the ongoing activities of the accused politicians and political parties and to ensure protection of the security of Election Staff posted at Varanasi and of public at large of the entire country: Issue a writ of mandamus in public interest or any other appropriate writ, order, direction commanding Respondent to withdraw the recognition given to such political parties resorting to illegal activities and to cancel the candidature of politicians found guilty before declaration the Election Results. Pass such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2.
The basic assertions in the petition relate to speeches which have been delivered during the recently finished election campaign by various leaders of certain political parties and how they have the effect potentiality to affect the social harmony. It is urged in the petition that these kind of hate speeches are totally unwarranted and can endanger the safety and security of public at large and undermine the structuralism of democratic body polity. Various examples have been given and certain newspaper clippings have been annexed. In view of what we are going to finally say, we are not inclined to advert to the same.

3. The petitioner appearing in person has submitted that in view of such hate speeches by political leaders when the equilibrium of the society is disturbed and there is a possibility of creating a crack in the multi-faceted fabric of the society, it is the constitutional duty of this Court to issue a writ or mandamus to the Election Commission of India to take appropriate steps. That apart, the petitioner-in-person has also made submissions for issue of a mandamus to cancel the recognition of such political parties and also to protect the liberty and safety of the citizens.

4. The seminal question that emanates for consideration is whether the Court in exercise of

power under Article 32 of the Constitution should enter into the arena of effect and impact of election speeches rendered during the election campaign in a public interest litigation. The

petitioner commenced his arguments by stating that since the infancy of the Constitution, this Court has not declined to declare a law wherever it has found that it is unconstitutional. In that regard, he has commended us to the decision in *The State of Bihar vs. Sir Kameshwar Singh*acareful reading of the said decision, we find that the issue decided therein has nothing to do with the case of the present nature. Learned counsel has ambitiously submitted relying on the judgment of this Court in *Smt.Nilabati Behera alias Lalita Behera vs. State of Orissa and others* wherein the Court expanded the concept of public remedy where there had been violation of fundamental rights and further opined that the concept of sovereign immunity would be not applicable. He has drawn our attention to paragraph 19 of the said judgment which reads as under:

> "We respectfully concur with the view that the court is not helpless and the wide powers given to this Court by Article 32, which itself is a fundamental right, imposes a constitutional obligation on this Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award of monetary compensation in appropriate cases, where that is the only mode of redress available. The power available to this Court under Article 142 is also an enabling provision in this behalf The contrary view would not merely render the court powerless and the constitutional guarantee a mirage but may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the court is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. It the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the have not, who are notpossessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate."

5. The facts of the said case are absolutely different since it was stated in the said case that it is within the power of the Court to formulate new tools which may be necessary for doing complete justice and for enforcement of fundamental rights guaranteed in the Constitution, when there is violation of fundamental rights enshrined under Article 21 of the Constitution. Thus, the said decision has no applicability to the case in hand. That apart, the issue related to grant of compensation.

6. Learned counsel has also drawn our attention to *Vishaka and others vs. State of Rajasthan and others* wherein the Court taking note of the sexual harassment at workplace and keeping in view the enforcement of the basic human rights or gender equality guaranteed against sexual harassment and more particularly against sexual harassment at work places issued guidelines and directed that the said guidelines and norms should be strictly followed and further observed that the same would be binding and enforceable in law. The other decisions which have been cited by the learned counsel are Daryo and others vs. State of U.P. and others Union

of India and another vs. Raghubir Singh (Dead) by Lrs. etc., Kanusanyal vs. District Magistrate, Darjeeling and others and *M.C.Mehta and another Union of India & Ors. vs. AIR 1987 SC 1086.* On a perusal of the aforesaid decisions, we find that they pertain different field altogether. Hence, the principle stated in Vishaka's case and the principles laid down in other decisions are really not attracted to the present case.

7. Lastly, the learned counsel has brought to our notice a recent three-Judge Bench decision of this Court in *Pravasi Bhalai Sangathan vs. Union of India and others* which pertains to the legal remedy because of hate speeches pertaining to inter state migrants. The Court adverted to various submissions advanced at the Bar and took note of certain decisions of the Supreme Court of Canada, dictionary meaning of 'hate speeches' and the offences for the hate speeches in Indian Penal Code, the Representation of People Act, 1951, Code of Criminal Procedure, 1973, Unlawful Activities (Prevention) Act, 1967, Protection of Civil Rights Act, 1955, Religious Institutions (Prevention of Misuse) Act, 1980 and thereafter Sections 124A, 153A, 153B, 295-A, 298, 505(1), 505(2) of Indian Penal Code, 1860 and eventually held as follows:

> "21. While explaining the scope of Article 141 of the Constitution, in Nand Kishore v. State of Punjab, (1995) 6 SCC 614, this Court held as under:
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> *"Their Lordships decisions declare the existing law but do not enact any fresh law, is not in keeping with the plenary function of the Supreme Court under Article 141 of the Constitution, for the Court is not merely the interpreter of the law as existing, but much beyond that. The Court as a wing of the State is by itself a source of law. The law is what the Court says it is."*

8. Be that as it may, this Court has consistently clarified that the directions have been issued by the Court only when there has been a total vacuum in law, i.e. complete absence of active law to provide for the effective enforcement of a basic human right. In case there is inaction on the part of the executive for whatsoever reason, the court has stepped in, in exercise of its constitutional obligations to enforce the law. In case of vacuum of legal regime to deal with a particular situation the court may issue guidelines to provide absolution till such time as the legislature acts to perform its role by enacting proper legislation to cover the field. Thus, direction can be issued only in a situation where the will of the elected legislature has not yet been expressed. It is desirable to put reasonable prohibition on unwarranted actions but there may arise difficulty in confining the prohibition to some manageable standard and in doing so, it may encompass all sorts of speeches which needs to be avoided . For a long time the US courts were content in upholding legislations curtailing "hate speech" and related issues. However, of lately, the courts have shifted gears thereby paving the way for myriad of rulings which side with individual freedom of speech and expression as opposed to the order of a manageable society. [See: Beauharnais v. Illinois, 343 U.S. 250 (1952); Brandenburg v. Ohio, 395 U.S. 444 (1969); and R.A.V. v. City of St. Paul, 112 S. Ct. 2538 (1992).

> "However, in view of the fact that the Law Commission has undertaken the study as to whether the Election Commission should be conferred the power to de-recognise a political party disqualifying it or its members, if a party or its members commit the offences referred to hereinabove, we request the Law Commission to also examine the issues raised herein thoroughly and also to consider, if it deems proper, defining the expression "hate speech" and make recommendations to the Parliament to strengthen the

Election Commission to curb the menace of "hate speeches" irrespective of whenever made."

9. The petitioner has submitted that this Court being the guardian of the Constitution is obligated to issue notice, call for the response and issue appropriate directions. Be it stated, the Election Commission mighthave taken note of it and initiated certain action. The matter of handling hate speeches could be a matter of adjudication in an appropriate legal forum and may also have some impact in an election disputes raised under the Representation of People Act, 1951. Therefore, to entertain a petition as a public interest litigation and to give directions would be inappropriate. We have said so in view of the judgments in *Manohar Joshi vs. Nitin Bhaurao Patil and another*and Prof.Ramchandra G.Kapse vs. Haribansh Ramakbal Singh.

10. Before parting with the case, it may be stated that public interest litigation was initially used by this Court as a tool to take care of certain situations which related to the poor and under-privileged who were not in a position to have access to the Court. Thereafter, from time to time, the concept of public interest litigation expanded with the change of time and the horizon included the environment and ecology, the atrocities faced by individuals in the hands of the authorities, financial scams and various other categories including ligibility of the people holding high offices without qualification. But a public interest litigation pertaining to s p e e c h e s delivered during election campaign, we are afraid, cannot be put on the pedestal of a real public interest litigation. There are laws to take care of it. In the name of a constitutional safeguard entering into this kind of arena, in our convinced opinion,would not be within the Constitutional parameters.

11. In the result, we are not persuaded, despite the adroit labour and vehement arguments by the petitioner-in-person to issue notice and accordingly, the writ petition, stands dismissed *in limine.*