

Bombay High Court

Adv. Firoz Babulal Sayyed vs The Union Of India And Anr on 2 May, 2022

Bench: Virendrasingh Gyansingh Bisht

27-PIL-68-2021

Pdp

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO. 68 OF 2021

Adv. Firoz Babulal Sayyed

.. Petitioner

Vs.

The Union of India & Anr.

.. Respondents

Mr. Pritesh K. Bohade for petitioner.

Mr. Anil Kumar i/by Mr. D. P. Singh for respondent no.1-UoI.

Mr. P. P. Kakade, Govt. Pleader with Ms. R. A. Salunkhe, AGP  
for respondent no.2-State.

CORAM: DIPANKAR DATTA, CJ &  
V. G. BISHT, J.

DATE: MAY 2, 2022

PC:

1. The petitioner is an advocate practicing at Nashik District Court. By instituting this writ petition, allegedly in public interest, the petitioner seeks an order on the respondents not to permit publication of pictures of gods/goddesses in newspapers. According to the petitioner, after the newspapers are read and its utility comes to an end, newspapers make their way into dustbins as well as the road side. This is disrespectful and consequently, the petitioner seeks an order for complete prohibition of publication of pictures of gods/goddesses in the newspapers. One other concern expressed by him is that such publications attract people to 27-PIL-68-2021 congregate and celebrate festivals in large numbers and during COVID times, people should be discouraged to congregate and thereby spread the disease.

2. What the petitioner intends through this so-called Public Interest Litigation (hereafter "PIL", for short) is to have sort of a legislation to prohibit publication of pictures of gods/goddesses in newspapers by a judicial order. Whether or not pictures of gods/goddesses ought to be published in newspapers is a matter entirely within the domain of the legislature, or to a limited extent, within the domain of the executive. If there be a vacuum in framing of an appropriate legislation, the remedy of the petitioner lies elsewhere. It is elementary, though it has to be restated, that a writ

petition would lie only if a legally protected right, which is judicially enforceable, is abrogated or infringed or is threatened to be abrogated or infringed by arbitrary executive action. If a law exists which is not implemented, the Court by its orders/directions would enforce the same. Should an ordinary law exist, which is arbitrary or unreasonable and offends any of the provisions of the Constitution including Article 14, the Court may step in and outlaw any such law. But the High Courts may not proceed for judicial legislation. There are authorities aplenty wherein law has been declared in no uncertain terms that it is not the function of the High Courts to either legislate or direct the State to make a particular legislation or even amend an existing legislation. We may, in this context, refer to the decision of the Supreme Court reported in (2012) 2 SCC 542 (V.K. Naswa vs. Home 27-PIL-68-2021 Secretary, Union of India & ors.) as well as the series of judgments referred to therein starting from (1990) 2 SCC 707 (Mallikarjuna Rao vs. State of Andhra Pradesh).

3. We called upon the learned advocate for the petitioner to cite any authority that permits the High Courts, in its exercise of power under Article 226 of the Constitution, to pass such an order which in its very nature would amount to a legislation on the specious ground that the legislature ought to have provided for such a law but has not provided. He has obviously failed to do so.

4. Insofar as spread of infection from COVID is concerned, that is a matter pertaining to public health which we ought to allow the respective Governments to take care of. Presently, COVID is on the wane and the restrictions have been withdrawn. It is not for the Courts to act as substitutes of elected Governments and interfere in matters pertaining to public health unless, of course, clear invasions of rights by arbitrary and unreasonable executive actions are demonstrated.

5. This PIL appears to be a publicity induced litigation rather than a litigation in real public interest.

6. For the foregoing reasons, we find no merit in the writ petition. The same stands dismissed. No costs.

(V. G. BISHT, J.)

(CHIEF JUSTICE)

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PANDIT  
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