**In Re: Banners Placed on Roadside in the City of Lucknow**

**v.**

**State of Uttar Pradesh**

Date of Judgment: March 09, 2020

Case Number: PIL No. 532 of 2020

Judicial Body: High Court (constitutional court of first instance)

Type of Law: Constitutional law

Themes: Right to privacy, right to protest

Tags: Personal identity, privacy, surveillance, disclosure of identity, banners, protest

Mode of Expression: Banners, posters, protest

Outcome: State action declared as illegal and unconstitutional, take down of banners

1. **Case Summary and Outcome**

The Allahabad High Court initiated *suo moto* proceedings against actions undertaken by the Lucknow District administration and the Police administration (**State Executive**). The State Executive published personal details of certain individuals in large scale banners at major roadside areas. These individuals were accused of vandalism in certain protests held during December 2019.

In exercise of its writ jurisdiction, the court questioned the legitimacy of the display of photographs, names and addresses of certain persons by the State Executive. The Court held that the actions of the State is nothing but an ‘unwarranted interference with privacy’ of the individuals whose names were published on the banners. Publication of personal details in banners by the State failed to satisfy the three-part test of legality, legitimacy and proportionality which must necessarily be fulfilled while curtailing the fundamental right to privacy. Accordingly, the Court directed the State to take down the banners and further directed the state government not to place any such banners on roadside containing personal data of individuals without any authority of law.

1. **Facts**

The District Administration and the Police Administration of Lucknow, a city in the State of Uttar Pradesh, one of the largest and most populated states in India, put up certain banners at major road-side areas with personal details of certain individuals. The banners displayed the photographs, names and addresses of 50 persons accused of vandalism during protest against the Citizenship Amendment Act, 2019 held in December 2019. These individuals were already proceeded against with claims of compensatory relief for vandalism and damage to public as well as private property caused at the time of the protest. The installation of such banners received wide publicity in print and online media on March 06-07, 2020. In view of the breach of privacy caused by the display of such banners, the Chief Justice of the High Court of Allahabad took *suo moto* cognizance of the matter and directed the registration and listing of a writ petition for public interest. The Court sought a response from the Commissioner of Police as well as the District Magistrate, Lucknow to explain the legal provisions on the basis of which the banners were placed on roadside, causing disruption in traffic movement in crowded areas and also breach of right of privacy.

The Respondent State Executive admitted that the actions were not permitted by or pursuant to any statutory provision. However, the Respondent opposed the writ petition on multiple grounds. The Respondent contended that the Court could not invoke its public interest jurisdiction as the same was available only to the unprivileged. In the instant case, the persons whose details were published in the banners could agitate their own grievance. (To support this, the Respondent relied upon State of Uttaranchal v. Balwant Singh Chaufal and Ors., 2010 (3) SCC 402). The cause of action arose in Lucknow where the banners were installed. Accordingly, the Allahabad bench of the High Court lacked jurisdiction. A technical objection was raised on the ground that cognizance of issues in the nature of public interest litigation (**PIL**) could only be taken by a division bench of the court and not by a single judge as was in the present case. Lastly, the Respondent submitted that the state action was bonafide, made with the object of deterring the mischief mongers from causing damage to private and public property.

1. **Decision Overview**

A division bench of the Court consisting of Govind Mathur, CJ and Ramesh Sinha, J delivered the decision on March 09, 2020. On the basis of arguments advanced by the Respondent, the Court addressed the following 4 issues:

1. Whether the *suo motu* action of the Court in invoking the PIL jurisdiction was justified?
2. Whether the Court lacked territorial jurisdiction to adjudicate upon the matter?
3. Whether the bench which took cognizance of the matter was empowered to do so as per the PIL adjudication norms?
4. Whether the actions of the State Executive resulted in unwarranted interference with the right of privacy?

Issue 1: Whether the *suo motu* action of the Court in invoking the PIL jurisdiction was justified?

The Respondent argued that the PIL jurisdiction had evolved and invoked by courts only to provide justice to larger section of the society who otherwise could not avail any benefit from the judicial system. The Court held that *suo moto* powers were invoked in the present case with a due application of mind which aimed at redressing the genuine public harm or injury caused by the action of the State Executive. The State action created a valid apprehension of serious injury to the fundamental right to life and personal liberty under Article 21 of the Indian Constitution. In view of this, notwithstanding the economic status of the persons directly affected by the State action, a constitutional court was empowered to intervene on its own, to prevent the assault of the fundamental rights protected by the Constitution.

Issue 2: Whether the Court lacked territorial jurisdiction to adjudicate upon the matter?

The second objection raised by the Respondent was that the entire cause of action in the instant case arose at Lucknow where the banners were hoisted. Hence, the bench of the High Court at Allahabad lacked territorial jurisdiction to consider the matter. The Court interpreted the term ‘cause of action’ in a broad manner where ‘cause’ is not merely limited to the personal injury but also includes within its ambit the injury caused to constitutional values and abrogation of fundamental rights by the government. Further, in the instant case, the government instruments in the State of Uttar Pradesh even proposed to install similar banners of accused persons in other cities where the protests took place and compensation was being sought against such alleged damage to public property by individuals. In view of the wide nature of the impugned action and the impact that it had on crucial fundamental rights of citizens, the Court held that it had the appropriate territorial jurisdiction to hear the matter.

Issue 3: Whether the bench which took cognizance of the matter was empowered to do so as per the PIL adjudication norms?

The Respondent submitted that matters in the nature of PIL could only be considered by a division bench of the Court. The *suo moto* reference of the matter by the Chief Justice of the Court (single bench) was incompetent and invalid. The Chief Justice noticed the state action and the resultant violation and accordingly, directed the Registry of the Court to place the matter before the division bench for adjudication. Therefore, cognisance of the present matter was taken only by the requisite bench as per the applicable PIL norms.

Issue 4: Whether the actions of the State Executive resulted in unwarranted interference with the right of privacy?

The Respondent justified its actions on the basis of the object it sought to achieve. As per the Respondent, banners were installed at conspicuous places in view of larger public interest to deter citizens from participating in illegal acts of vandalism. In any event, the notices issued by the State to the individuals whose identity was revealed on the banners, had already been challenged. Hence, no useful purpose would be achieved by the present PIL. The Court dismissed these arguments and opined that the matter at hand pertained to the larger issue of unwarranted interference in privacy of a person by the state action.

Admittedly the act of installing banners in conspicuous, crowded locations was not pursuant to any law that allowed the State to place banners with personal details of accused from whom compensation was sought. The said action was given effect to only pursuant to a government order which at the most can be considered as a ‘direction’ as per a reading of the Supreme Court’s decision in Re: Destruction of Public and Private Properties, 2009 (5) SCC 212. While this direction provided a procedure to charge compensation from the persons who caused damage to public property, the same did not permit the state to encroach upon privacy of individuals. The Court also held that the Code of Criminal Procedure, 1973 which governs the criminal law procedure does not empower the police nor the executive to display the personal records of any individual to public at large. The Court relied upon the decision in Malak Singh and Ors. v. State of Punjab and Haryana and Ors., AIR 1981 SC 760, to substantiate that even information pertaining to history sheeter’s criminal record and surveillance needed to be kept discreet and confidential. The said information could not be disclosed to the public.

A major part of the judgment is dedicated to delineating the importance of right to privacy which is a recognised fundamental right under Part III of the Constitution of India. It is deeply ingrained in the fundamental right to equality, freedom of speech and expression, freedom of movement and protection of life and personal liberty. (K.S. Puttuswamy and Ors. v Union of India and Ors., AIR 2017 SC 4161 and People’s Union for Civil Liberties (PUCL) v. Union of India, 1997 (1) SCC 301) Right to privacy while not an absolute right, it cannot be abrogated or waived by mere executive action. The Supreme Court of India has recognised that a person’s privacy rights can be overridden by compounding state and individual interests only subject to satisfaction of the threefold test of: (a) procedure established under law (legality), (b) reasonable nexus with the legitimate aim necessitating the curtailment of the right (legitimacy) and (c) proportionality of the measure in achieving the legitimate aim (proportionality).

The action of the State Executive failed to satisfy the aforesaid touchstones. The action did not meet the test of legality as no law permitted the state to place banners with personal data of the accused from whom the compensations were sought. The actions of the state also failed the test of legitimacy and necessity. The state action in publishing the personal data and identity of individuals was not necessary in a democratic society, for the legitimate aim that the state sought to achieve. Lastly, the state action also failed to satisfy the test of proportionality. The government failed to satisfy the need to publish the personal data and identity of only few individuals from whom compensation was sought even though there were innumerable accused in the state of Uttar Pradesh facing even more serious criminal allegations whose personal details were still not subjected to publicity. In fact, the Court even held that the placement of personal data of selected persons reflected colourable exercise of powers by the Executive. The action of the State was an unwarranted interference with right to privacy.

In view of the above, the Court directed the District Magistrate, Lucknow and the Commissioner of Police, Lucknow Commissionerate, Lucknow to remove the banners from the roadside forthwith. The state government was further directed not to place such banners on roadside containing personal data of individuals without any authority of law. The district Magistrate, Lucknow was further directed to submit a report of compliance to the Court, after receipt of which the petition will be disposed of by the Court.

**Decision Direction**

**Expands Expression**

The judgment is extra-ordinary as the court initiated *suo-moto* proceedings to address the larger issue of violation of right to privacy by the state machinery. While no particular provision of the Indian Constitution is dedicated to recognising right to privacy explicitly under the Indian Constitution, it is an intrinsic and inalienable part of the fundamental rights guaranteed by the Constitution. In the present decision, the Court has upheld the principle that privacy is intrinsic to a person’s dignity, freedom and liberty. In fact, the banners put up by the State were in relation to certain individuals who were accused of vandalism at the time of a protest against a statute implemented by the Indian government. Right to protest is a part of freedom of speech and expression. While the Court in its *suo-moto* proceedings has not commented upon the legality of the protest where alleged vandalism took place, the Court has categorically emphasised that in a democratic society, even individuals who are accused or even criminals enjoy the right to privacy and free speech. These rights are invaluable and cannot be curtailed by the government in an arbitrary manner, by colourable exercise of powers. The Court applied the universally accepted principles of legality, legitimacy and proportionality to conclude that the State actions were illegal and unwarranted.

1. **Global Perspective**

**National standards, law or jurisprudence**

* India, Constitution of India, art. 21
* India, Constitution of India, art. 19
* Ind., K.S. Puttuswamy and Ors. v Union of India and Ors., AIR 2017 SC 4161
* Ind., People’s Union for Civil Liberties (PUCL) v. Union of India, 1997 (1) SCC 301
* Ind., Malak Singh and Ors. v. State of Punjab and Haryana and Ors., AIR 1981 SC 760
* Ind., State of Uttaranchal v. Balwant Singh Chaufal and Ors., 2010 (3) SCC 402
* Ind., Re: Destruction of Public and Private Properties, 2009 (5) SCC 212

1. **Case Significance**

**The decision establishes persuasive precedent within its jurisdiction.**

The decision establishes a binding precedent for single bench of the High Court and all lower courts in the State of Uttar Pradesh. It has a persuasive precedent for all other courts. The present decision has been challenged before the Supreme Court of India in State of Uttar Pradesh v. High Court of Judicature at Allahabad, Through Registrar General Allahabad, SLP (C) No. 6286/ 2020. The Supreme Court has not stayed the order of the High Court. However, in view of the nature of the matter and its significance, the Supreme Court ordered to place the matter before a bench of at least three judges. As the matter is pending before the Supreme Court, the operative part of the High Court order which directed the State government remove the banners has not been given effect to. The precedential value of the present judgment will depend on the outcome of the Supreme Court.

**LINKS:**

* <https://economictimes.indiatimes.com/news/politics-and-nation/up-govts-banners-on-anti-caa-protesters-highly-unjust-allahabad-high-court/articleshow/74542515.cms?from=mdr>
* <https://www.livelaw.in/top-stories/sc-refers-to-larger-bench-up-govts-appeal-against-allahabad-hc-order-for-removal-of-name-shame-banners-153737>