

MANU/KA/2196/2020

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

Writ Petition No. 6749 of 2020 (GM-RES/PIL)

Decided On: 13.05.2020

Appellants: **Campaign Against Hate Speech An Unregistered Organisation and Ors.**
Vs.

Respondent: **State of Karnataka and Ors.**

Hon'ble Judges/Coram:

B.V. Nagarathna and M.G. Uma, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Harish B. Narasappa, Adv.

For Respondents/Defendant: M.B. Naragund, Addl. Solicitor General, M.N. Kumar, CGSC, R. Subramanya, Addl. Adv. General and T.L. Kiran Kumar, AGA

ORDER

1. Though there are office objections along with office note, since the writ petition is filed through e-mail, keeping open the office objections, we have heard the learned Counsel for petitioners.

2. This writ petition is stated to be filed in a public interest. The first petitioner is an unregistered organization called 'Campaign against Hate Speech', (CAHS) which is stated to be a group with highly accomplished academics, lawyers and concerned citizens from different professional backgrounds who work to combat hate speech emanating from sections of media, public personalities and on social media; the second petitioner is stated to be a social anthropologist, a former Professor at the National Institute of Advanced Studies, Bengaluru while the third petitioner is stated to be an accomplished researcher based in Bengaluru who is engaged in the work and analysis of issues pertaining to human rights and social justice.

3. The petitioners have filed this writ petition styling it as a public interest petition and seeking the following prayers and interim prayer:

PRAYER

"WHEREFORE, it is humbly prayed that this Hon'ble Court may be pleased to:

- a) Call for records from the respondents with respect to any action they may have taken in connection with the offences and violations specified in this petition;
- b) Issue a writ of mandamus directing the respondents to take action in accordance with law against media houses and political leaders who have done, and continue to, violate the law with impunity;
- c) Issue a writ of mandamus directing the respondent No. 1 to initiate steps to take down inflammatory videos and reports targeting

specific communities;

d) Issue a writ of mandamus directing the respondent No. 3 to initiate action against media houses and political leaders who have violated provisions of the IPC and other applicable penal laws;

e) Issue a writ of mandamus directing the respondent No. 4 to issue appropriate orders against the media houses who have violated the provisions of the Cable Television Networks (Regulation) Act, 1995 read with the Cable Television Networks (Regulation) Rules, 1994 as well as the Advisories issued by respondent No. 4;

f) Call for records from respondent No. 4 with respect to the constitution and functioning of the State Level Monitoring Committee for Private Television Channels as well as the District Level Monitoring Committee for Private Television Channels;

g) Issue a writ of mandamus directing respondent No. 8 to register the complaint filed by the Campaign against Hate Speech and coordinate the said resolution of the said complaint with the appropriate authorities under the terms of the National Commission for Minorities Act, 1992;

h) Issue a writ of mandamus directing respondent No. 9 to register the complaint filed by the Campaign against Hate Speech and coordinate the said resolution of the said complaint with the appropriate authorities under the terms of the Karnataka State Minorities Commission Act, 1994;

i) Issue a writ of mandamus directing respondent Nos. 10 and 11 to register the complaint filed by the Campaign against Hate Speech and initiate inquiries in accordance with the provisions of the Protection of Human Rights Act, 1993;

j) Pass any other necessary writ, order or direction as may be deemed necessary in the facts and circumstances of the case.

INTERIM PRAYER

WHEREFORE, it is humbly prayed that this Hon'ble Court may be pleased to pass an order:

Directing the respondent No. 3 to act on the emails and complaints filed by the petitioners, registering First Information Reports in respect of the media reports produced at Annexures-E, F and G, that are in violation of Section 153A, 153B, 295-A, 298 and 505(2) of the Indian Penal Code, 1860."

4. We have heard Sri. Harish B Narasappa, learned Counsel for petitioners and learned Additional Advocate General for respondent Nos. 1 to 3 and 7 who has appeared on advance notice and learned Additional Solicitor General for India for respondent No. 4 who has also appeared on advance notice and perused the material on record.

5. Learned Counsel for the petitioners submitted that the petitioners have filed this

writ petition in public interest seeking the aforesaid prayers, as the representation made by petitioner No. 1 with regard to initiation of action against hate speech has not been taken into consideration by the respondents as there is no registration of complaint filed by the first petitioner before the respondents. He contended that the complaints have been made in the background of Corona Virus COVID-19 which has engulfed the world including India and in the context of outbreak of COVID-19 pandemic there has been inciteful and irresponsible speeches and reports made by certain political personalities and also in media accusing certain sections of the society. He submitted that the said acts of inciteful speech and utterances in media, social media as well as by the political personalities amounts to hate speech. That the impact of hate speech is overwhelming. In this regard, he placed reliance on the judgment of the Hon'ble Supreme Court in the case of Pravasi Bhalai Sangathan Vs. Union of India (UOI) and Ors. reported in MANU/SC/0197/2014 : AIR 2014 SC 1591 wherein, the Hon'ble Supreme Court has elucidated on the impact of hate speech. He contended that the respondents herein have been inactive and no response has been given by them to the representation made by petitioner No. 1 regarding hate speech against a section of society which has been broadcast on television channels as well as speeches made by certain political personalities. He contended that the writ petition raises important questions regarding hate speech and its impact on society in general and on certain sections of society which are targeted in particular. Hence, the same may be entertained and directions may be issued to the respondents. In this regard, he pointed to the Annexures to the Writ Petition.

6. Learned Additional Advocate General, who has appeared before this Court on advance notice countered the aforesaid arguments by stating that the writ petition is not in public interest at all. That if any of the complainants have filed complaints by following the provisions of Criminal Procedure Code, 1973 (Cr.P.C.,) and the same have not been acted upon, they have a remedy under the provisions of Cr.P.C. itself. Further, this Court cannot, in a public interest litigation, entertain the prayers sought for by the petitioners, when the complainants, if any, are not before this Court. In this regard, he placed reliance on the judgment of the Hon'ble Supreme Court in the case of Sudhir Bhaskarrao Tambe Vs. Hemant Yashwant Dhage and Others reported in MANU/SC/1328/2010 : (2016) 6 SCC 277. He submitted that the writ petition may not be entertained and the same may be dismissed summarily.

7. Learned Senior Counsel and Additional Solicitor General for India, who appeared on advance notice for respondent No. 4, at the outset, submitted, this is not a public interest litigation, but, it is a "publicity interest litigation". That the complainants are not before this Court. The petitioners cannot seek the aforesaid prayers by filing a writ petition in the manner that have been done so. Hence, the same may be summarily dismissed.

8. We have perused the memorandum of writ petition and particularly, the prayers and interim prayer sought for by the petitioners, which are extracted above.

9. On perusal of the same, at the outset, we observe that some of the prayers are vague and the interim prayers which have been sought cannot be sought by filing a writ petition invoking Article 226 of the Constitution. The petitioners herein have not filed complaints under the provisions of Cr.P.C. In fact, the Hon'ble Supreme Court in the case of Sudhir Bhaskarrao Tambe, has categorically stated that if a person has grievance that his FIR has not been registered by the police, or having been registered, proper investigation has not been done, then the remedy of an aggrieved person is not to file a writ petition under Article 226 of the Constitution of India, but,

he has to approach the Magistrate under Section 156(3) of Cr.P.C. If such an application is made under the said provision before the Magistrate, prima facie, if the Magistrate is satisfied, he can direct to register the FIR, or if the FIR has been registered, he can direct for a proper investigation to be done and in his discretion, if he deems it necessary, can recommend the change of Investigation Officer also, so that proper investigation is done in the matter. Therefore, in such cases, the Hon'ble Supreme Court has stated that the aggrieved complainant cannot file a petition under Article 226 of the Constitution of India. But in the instant case, as we have already noted that petitioners (except petitioner No. 1) are not the complainants, but the petitioners have stated that they have filed this writ petition in public interest. Hence, it is understood that these petitioners are not the complainants. But, if these petitioners contend that they have filed the complaints themselves, they could not have filed the writ petition in public interest. At any rate, no writ petition under Article 226 is maintainable under the aforesaid circumstances in view of the aforesaid judgment of the Hon'ble Supreme Court.

10. In the aforesaid judgment, reliance is placed on Sakiri Vasu vs. State of U.P. reported in MANU/SC/8179/2007 : (2008)2 SCC 409, wherein it has been stated that if a person has a grievance that his FIR has not been registered by the police, then the remedy of the aggrieved person is not to go to the High Court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156(3) of the Code of Civil Procedure.

11. Further, the petitioners themselves have produced directives issued by the Government of India, Ministry of Information and Broadcasting 'A' Wing, Shastri Bhavan, New Delhi dated 11.12.2019, 20.12.2019 as well as 25.02.2020 issued to all Private Satellite TV channels. The same read as under:

No. N-4101 5/1/2019-BC-III
GOVERNMENT OF INDIA
MINISTRY OF INFORMATION AND BROADCASTING 'A' WING,
SHASTRI BHAVAN, NEW DELHI-110001

Dated 11th December 2019,

To,

All Private Satellite TV Channels,

On various occasions in the past, this Ministry has issued advisories for private satellite TV channels to broadcast content strictly in adherence to the Programme and Advertising Codes as prescribed in the Cable Television Networks (Regulation) Act, 1995 and the Rules framed thereunder.

2. It is hereby reiterated that all TV channels are advised to be particularly cautious with regard to any content which:

(i) is likely to encourage or incite violence or contains anything against maintenance of law and order or which promotes anti-national attitudes; and or

(ii) contains anything affecting the integrity of the nation; and ensure that no such content is telecast which is violative of these codes.

All private satellite TV channels are requested to ensure strict compliance of the above."

xxxxxx

NO. 41015/1/2019-BC. III
GOVERNMENT OF INDIA
MINISTRY OF INFORMATION & BROADCASTING
Shastri Bhawan, Rajendra Prasad Road
New Delhi-110001

December 20, 2019

To

All Private Satellite TV Channels

All DTH/HITS Operators/MSOs/Cable Operators

Reference is invited to the Advisory dated 11.12.2019 issued by the Ministry of Information and Broadcasting for ensuring strict compliance to the specific programmes Codes under the Cable Television Networks (Regulation) Act, 1995 and the Rules framed thereunder mentioned in the Advisory.

2. It is observed that notwithstanding the above Advisory, some TV channels are telecasting content which do not appear to be in the spirit of the Programme Codes specified therein. It is, accordingly, reiterated that all TV channels may abstain from showing any content which

(a) is likely to instigate violence or contains anything against maintenance of law and order or which promotes anti-national attitudes;

(b) contains anything affecting the integrity of the nation;

(c) criticizes, maligns or slanders any individual in person or certain groups, segments of social public and moral life of the country.

Strict compliance to the above is advised."

xxxxxx

NO. N-4101 5/1/2019-BC-III
GOVERNMENT OF INDIA
MINISTRY OF INFORMATION AND
BROADCASTING 'A' WING, SHASTRI BHAWAN,
NEW DELHI-110001

February 25th 2020

To,

All Private Satellite TV Channels

"On various occasions in the past, this Ministry has issued advisories for private satellite TV Channels to broadcast content strictly in adherence to the

Programme and Advertising Codes as prescribed in the Cable Television Networks (Regulation) Act, 1995 and the Rules framed thereunder.

2. It is hereby reiterated that all TV channels are advised to be particularly cautious with regard to any content which:

(i) is likely to encourage or incite violence or contains anything against maintenance of law and order or which promotes anti national attitudes;

(ii) contains attack on religious or communities or visuals or words contemptuous of religious groups or which promote communal attitudes;

(iii) contains anything defamatory, deliberate, false and suggestive innuendos and half-truths.

3. It may kindly be ensured that no content is telecast which is violative of the aforementioned programme codes.

All private satellite TV channels are requested to ensure strict compliance of the above."

Therefore, the above are presently the guidelines in operation as far as television channels are concerned.

12. That apart, the provisions of Indian Penal Code, 1860; The Representation of People Act, 1951; Information Technology Act, 2000; Unlawful Activities (Prevention) Act, 1967; Protection of Civil Rights Act, 1955; Religious Institutions (Prevention of Misuse) Act, 1980; The Cable Television Networks (Regulation) Act, 1995 and The Cable Television Network (Rules), 1994; The Cinematographers Act, 1952 as well as Code of Criminal Procedure, 1973, amongst other legislation, provide substantive and procedural law to the aggrieved persons who think or consider certain speech to be hate speech to seek their respective remedies. Therefore, there is already a voluminous bundle of rights and remedies created in various enactments for aggrieved persons to complain against what they consider to be hate speech. Moreover, the Central Government has formed the aforesaid guidelines which have been issued to the Private Satellites TV Channels and these are also guidelines on Communal Harmony and other such guidelines to promote Communal Harmony in the States and Union territories of India. Thus, it is evident that the Parliament has already provided substantial and effective remedies for protection of persons from hate speech and any aggrieved person can set in motion the criminal law if he is so aggrieved.

13. In the instant case, as already noted, the complainants who have complained against hate speech are not before this Court. If petitioner No. 1 is a complainant or has made representations to various authorities including the respondents herein, it could not filed this writ petition in public interest. If petitioner Nos. 2 and 3 are also aggrieved persons, they could avail the remedies under various provisions of law.

14. That apart, it is also to be borne in mind that, there is no precise legislative definition of what 'hate speech' is. It is for the Parliament to legislate on that aspect of the matter. In the absence of there being any specific legislation, it would not be proper for this Court to make a substantive analysis or give a concrete definition

about 'hate speech' and on that basis to issue directions as per the prayers sought for by the petitioners in the writ petition.

15. It is also significant to note that Article 19(1)(a) of the Constitution of India has recognized 'Freedom of speech and expression' which also includes 'Freedom of the press'. The said freedom is subject to reasonable restrictions as stated in Article 19(2) of the Constitution of India, which reads as under:

"Article 19(2)-Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence."

Thus, if the State or Union Government feels that there ought to be reasonable restrictions against the Right to Speech and Expression, it would have to be justified on the basis of what has been stated under Article 19(2) of the Constitution of India. Any action to be initiated by the Union or State Government on the exercise of right to freedom of speech and expression, that would be justified within the parameters of Article 19(2) of the Constitution of India, is permitted.

16. In the present scenario, since the Parliament has not yet thought it appropriate to legislate on the concept of 'hate speech', in this writ petition, in the absence of there being any definition of 'hate speech' as such, this Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot issue directions merely on the basis of impact of hate speech on the society in general or certain sections of the society in particular.

17. Further, it is also not appropriate for the Court to exercise its jurisdiction under Article 226 of the Constitution of India to direct either the Parliament or the State Legislature. In that regard, we may respectfully rely on the dictum of the Hon'ble Supreme Court in the case of A K Roy Vs. Union Of India reported in MANU/SC/0051/1981 : AIR 1982 SC 710.

18. Having looked into the tenor of the prayers sought for by the petitioners in this writ petition, we do not think that the writ petition which is filed as Public Interest Litigation could be entertained as the prayers sought for by the petitioners cannot be granted. Further, this Court does not think it appropriate to grant the said reliefs in exercise of its jurisdiction under Article 226 of the constitution.

In the circumstances, the writ petition is dismissed.

© Manupatra Information Solutions Pvt. Ltd.