

A.F.R.**Court No. - 02****Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 210 of 2023****Petitioner :- Moti Lal Yadav****Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Culture, Civil Sect. Lko. And Others****Counsel for Petitioner :- In Person****Counsel for Respondent :- C.S.C.,C.S.C.****Hon'ble Devendra Kumar Upadhyaya,J.****Hon'ble Om Prakash Shukla,J.**

1. This Public Interest Litigation Petition has been filed by a practicing lawyer of this Court praying for quashing of a Government Order/Letter dated 10.03.2023 issued by the Principal Secretary of the State Government in the department of Tourism which is addressed to all the Divisional Commissioners and the District Magistrates in the State of Uttar Pradesh.
2. By the impugned Government Order/Letter, the State Government has issued certain directions to celebrate, between 29th and 30th March, 2023, the occasion of Ashtami and Shri Ram Navami. The directions issued in the said Government Order/Letter are as follows:-
 - (i) By taking a special drive, participation of women and girls in the programmes be ensured and functions relating to chanting of Durga Saptshati/Devi Jagran/Devi Gayan be organized.
 - (ii) On the occasion of Ashtami and Shri Ram Navami, Akhand Ramayan Path be organized at main Shakti Peeth Temples to publicize human, social and national values amongst the general public and for the said purpose, committees be constituted at District, Tehsil and Development Block levels in each District.

(iii) The performers and Artists shall be selected and chosen in every district by a Committee to be chaired by the District Magistrate in co-ordination with Departments of Culture and Public Information of the State. The Programmes be organized commensurate to the glory of Ma Durga and in such programmes, the public representatives be invited while simultaneously ensuring participation of the people.

(iv) The programme is a State Level programme and hence on this occasion through the Department of Information, hoardings be put along with publicity in print media/social media about the developmental works and development of basic amenities by the Tourism Department of the State Government at Shakti Peeths and Devi Temples.

(vi) At every site of the programme, the District Magistrate shall ensure sanitation, drinking water, security, lighting and laying of durries timely and the functions/programmes shall be organized only after obtaining No Objection Certificates (NOC) from the authorities at the appropriate level.

(v) Information of all such programmes including address of the temples, photographs, GPS location and contact number of the Management of the temples etc. shall be furnished to the Department of Culture.

(vi) For the purposes of giving honorarium to the Artists/ Performers in such programmes, the Department of Culture shall make available a sum of Rs.1,00,000/- (Rupees One Lakh Only) to the District Tourist and Culture Council of every district and rest of the arrangements shall be made by the district administration at its own level.

3. The reservation expressed by the petitioner, who appears in person in this Public Interest Litigation, is in relation to the instructions contained in the impugned Government Order/ Letter, whereby financial aid has been ordered to be provided.
4. Heard the petitioner in person and Sri Amitabh Rai, learned Additional Chief Standing Counsel representing the State respondents.

5. It has been argued by the petitioner that the State Government while issuing impugned Government Order/Letter has issued instructions to organize celebrations of Shri Ram Navami in the temples and to provide financial aid at Block, Tehsil and District level. According to him, the said Government Order/Letter further contains a direction to the Pujaris of the temples to perform religious practices in the garb of reducing the negative energy in the Society. The submission further is that on the one hand, the impugned Order/letter provides financial aid for performing religious activities in the temples during Navratri, however, on the other hand, the State has not made any provision for Muslims during holy month of Ramzan which, this year, starts simultaneously with start of Shri Ram Navami and accordingly, in the views of the petitioner, such action on the part of the State is discriminatory. Shri Moti Lal Yadav, the petitioner in person further argues that Articles 25, 26, 27 and 28 of the Constitution of India protect every citizen of India from being compelled to pay any tax and prohibits State in participation of any religious authority. It has also been argued that Part - III and Part - IV of the Constitution of India cast a duty on the State Government to provide protection to every citizen while he follows/ propagates his religion. However, the Constitution does not make any provision for the State to propagate any particular religious activity.
6. Shri Yadav has also submitted that the impugned Government Order/Letter is beyond the administrative authority/functions of the State in terms of the provisions contained in List II and List III of Schedule VII of the

Constitution of India and that the State cannot take shelter in the 'residuary power' clause as the same is available only with the Parliament and not with the State Legislative.

7. It has been further argued that the Parliament has consciously included the word '*Secular*' in the Preamble of the Constitution of India and as such, as per the Scheme of the Constitution of India, neither the State Government nor the Central Government can be permitted to propagate any religious activity, however, protection of religious activities of the people is moral and constitutional obligation of the State. The petitioner has further emphasized that the impugned Government Order/Letter has clearly violated Article 27 of the Constitution of India which enunciates Right of Freedom as to payment of taxes for promotion of any particular religion and forbids the State from compelling any person to pay any taxes, proceeds of which are specially used in payment of expenses for the promotion or maintenance of any religion or religious denomination.
8. On the basis of the aforesaid submissions and arguments made by the petitioner, it has been urged that the impugned Government Order/Letter being violative of the Constitutional Scheme, specifically Article 27 of the Constitution of India deserves to be quashed.
9. On the other hand, Sri Amitabh Rai, learned Counsel representing the State respondents has submitted that the instant Public Interest Litigation is highly misconceived for the reason that by issuing the impugned Government Order/Letter, the State Government is not seeking to propagate any religious activity. His submission is that it is the

responsibility of the State to protect the cultural ethos of the society and on account of various cultural activities on the occasion of festivals a large number of tourists and devotees gather and participate which ultimately augments the State-revenue. It has also been stated by Shri Rai that various cultural heritages have been included in the list of Cultural Heritage maintained by United Nations Economic, Social and Cultural Organization (UNECSO) and such list maintained by UNESCO contains Yoga, chanting of Vedic Mantras, Durga Puja, Kumbh Mela, Ramlila, Sankirtana, Garba, Buddhist Chanting and Kalbelia. Shri Rai has further argued that making arrangement of sanitation, drinking water, security, light, sound and laying of Durries at such sites do not amount to propagation of religion. He has further submitted that the amount of Rs.1,00,000/- per district under the impugned Government Order/Letter, is to be paid not to the priests of the temples, but to the Artists/Performers through District Tourist and Culture Council.

10. In substance, submission of the learned State Counsel is that the impugned Government Order has been misread and misconstrued by the petitioner as the same does not contain any direction or instruction to promote any religious activity or propagate any religion. He, thus, submits that the instant Public Interest Litigation is liable to be dismissed at its threshold.
11. We have thoughtfully considered the submissions made by the respective parties.

12. Thrust of the argument of the petitioner is based on the provisions contained in Article 27 of the Constitution of India which is extracted here-in-below:-

"27. Freedom as to payment of taxes for promotion of any particular religion. -- No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination."

13. The other argument raised by the petitioner is that by issuing the impugned Government Order/Letter, the State is indulging in propagation of a particular religion which in view of the Scheme of the Constitution and the State being a Secular State, is impermissible.
14. Article 27 of the Constitution of India mandates that no person can be compelled to pay any taxes which can be utilized for payment of expenses for promotion or maintenance of any particular religion or religious denomination.
15. Article 27 of the Constitution of India has been the subject matter of consideration by Hon'ble Supreme Court in the case of *'The Commissioner, Hindu Religious Endowments, Madras vs. Shri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [AIR 1954 SC 282]'*. The Constitution Bench of the Hon'ble Supreme Court comprising of Six Hon'ble Judges in the aforesaid case has held that what is not permissible under Article 27 of the Constitution of India is the specific apportionment of the proceeds of any tax in payment of expenses for promotion or maintenance of any particularly religion or religious denomination. Hon'ble Supreme Court further held that the reason underlying the provision is obvious and that India

being a secular State and there being freedom of religion guaranteed by the Constitution, both to the individuals and to groups, it is against the policy of the Constitution to pay out of public funds and money for promotion or maintenance of any particular religion or religious denomination. Para - 50 of the judgment in the case of **The Commissioner, Hindu Religious Endowments, Madras** (*supra*) is relevant and is extracted here-in-below:-

"(50) In view of our decision on this point, the other ground hardly requires consideration. We will indicate, however, very briefly our opinion on the second point raised. The first contention, which has been raised by Mr. Nambiar in reference to article 27 of the Constitution is that the word "taxes", as used therein, is not confined to taxes proper but is inclusive of all other impositions like cesses, fees, etc. We do not think it necessary to decide this point in the present case, for in our opinion on the facts of the present case, the imposition, although it is a tax, does not come within the purview of the latter part of the article at all.

What is forbidden by the article is the specific appropriation of the proceeds of any tax in payment of expenses for the promotion or maintenance of any particular religion or religious denomination. The reason underlying this provision is obvious. Ours being a secular State and there being freedom of religion guaranteed by the Constitution, both to individuals and to groups, it is against the policy of the Constitution to pay out of public funds any money for the promotion or maintenance of any particular religion or religious denomination. But the object of the contribution under section 76 of the Madras Act is not the fostering or preservation of the Hindu religion or any denomination within it. The purpose is to see that religious trusts and institutions, wherever they exist, are properly administered. It is a secular administration of

the religious institutions that the legislature seeks to control and the object, as enunciated in the Act, is to ensure that the endowments attached to the religious institutions are properly administered and their income is duly appropriated for the purposes for which they were founded or exist. There is no question of favouring any particular religion or religious denomination in such cases. In our opinion, article 27 of the Constitution is not attracted to the facts of the present case."

16. Examining the validity of Section 76 of Madras Hindu Religious and Charitable Endowments Act, 1951 (here-in-after referred to as the 'Act, 1951'), it has been observed by Hon'ble Supreme Court in the said case that Section 76 of the Act, 1951 was not the fostering or preservation of the Hindu Religion or any denomination; rather, the purpose of enacting Section 76 of the Act, 1951 was to see that Religious Trusts and Institutions are properly administered and that it is the Secular Administration of the religious institutions that the Legislature sought to control and object of the said provision was to ensure the endowments and religious institutions are properly administered and their income is duly appropriated for the purpose for which they exist.

(Emphasis supplied by Court)

17. We may notice that by enacting Section 76 of the Act, 1951, the Legislature of the then Madras State had made compulsory for all religious institutions to pay annually to the Government a contribution not exceeding five percent of their income on account of services rendered by the Government and their Offices functioning under the said Act. The challenge was first considered by the Hon'ble Madras High Court which held that the provision for

compulsory contribution available in Section 76 of the Act, 1951 came within the mischief of Article 27 of the Constitution of India. However, reversing the view of Hon'ble Madras High Court, the Constitution Bench of Hon'ble Supreme Court in the case of **The Commissioner, Hindu Religious Endowments, Madras (supra)** found that such amount payable under Section 76 of Act, 1951 to the Government was not to be appropriated to meet the expenses for promotion of united religion; rather, it was utilized for the secular administration of religious institutions. Thus, under the Scheme of our Constitution which will include operation of Article 27 of the Constitution of India as well, what is prohibited and forbidden is that the State will not indulge in any religious activity either for maintenance or for propagation of religion. However, so far as the secular activity relating to a religion is concerned, in our considered opinion, there does not appear to be any bar for the State to undertake such secular activity which may be essential for making the followers of a particular religion or religious denomination realize their right of freedom of conscience, practice, propagation or professing religion.

18. We need to clearly draw distinction between a "**religious activity**" leading to maintaining or propagating a particular religion or religious denomination and a "**secular activity**" undertaken by the State to provide for certain conveniences at religious gatherings.
19. As observed above, what is prohibited for the State is indulgence in religious activity or the activities amounting to propagation of any religion or religious denomination and not a secular activity. When we examine the impugned

Government Order/Letter dated 10.03.2023 issued by the State Government in the Department of Culture what we find is that the provision for spending Rs.1,00,000/- per district has been made not for any religious activity or for promotion of any religion or religious denomination; rather, the said amount has been provided for being paid honorarium to the performers/Artists who will be performing during the programmes through the District Tourist and Culture Council, as mentioned in the impugned Government Order/Letter.

20. It is also to be clearly noted that the State by issuing the impugned Government Order/Letter has not entrusted the said amount to anyone related to religious activity, such as, priest of a temple or anyone related with management of a temple. The amount of Rs.1,00,000/- has rather been entrusted with the District Tourist and Culture Council, that too, not to be appropriated for any religious activity, but to pay honorarium to the performers/Artists.
21. We also notice that one of the purposes for which the Government Order dated 10.03.2023 has been issued is to publicize different development works and development of basic amenities by the Tourist Department and other departments of the State Government at the temples. It is common knowledge that on the occasion of Navratri Puja/Shri Ram Navami, large number of gathering at temples take place and if the State is making a provision for putting up hoardings or adopting other publicity modes in print media for publicizing its developmental works, in our considered opinion, such an act of the State Government does not amount to propagation of any religion or religious denomination.

22. We are of the unambiguous opinion that payment of honorarium by the State to the Artists/Performers at the programmes, though organized at the site of the temples or Melas during Shri Ram Navami, does not amount to indulgence of the State in propagation of any religion or religious denomination. It is a simple secular activity of the State while it indulges in publicizing the developmental works undertaken by the State.
23. As observed above, the impugned Government Order/Letter does not make any provision for payment of any amount to any person, be it a Priest in a Temple or anyone else associated with the activities of the Temple; rather, the amount is to be paid to the performers/Artists who may be performing on such occasions. The Government Order, thus, in our opinion does not provide for any State activity relating to maintenance or propagation of any religion or religious denomination.
24. At this juncture, we may have a reference of a judgment of Hon'ble Supreme Court in the case of '*Prfaull Goradia v. Union of India [(2011) 2 SCC 568]*', wherein the constitutional validity of Haj Committee Act, 1959 which was replaced by the Haj Committee Act, 2002, was challenged on the ground of violation of Article 27 of the Constitution of India as well by stating that part of proceeds of the taxes being paid by the citizens was used for providing subsidy for Haj pilgrimage which is done by Muslims. Hon'ble Supreme Court did not agree with the submission based on Article 27 of the Constitution of India and not only dismissed the writ petition but also observed that we must not be too rigid in such matters and must give some free play to the joints of the State machinery. Hon'ble

Supreme Court further held that if a small part of tax collected is utilized for providing some conveniences or facilities or concessions to any religious denomination, that will not be violative of Article 27 of the Constitution of India.

25. Thus, if the State spends some money out of the taxes/revenue collected by it from the citizens and appropriates some amount for providing some conveniences or facilities to any religious denomination it will not be violative of Article 27 of the Constitution of India. While observing this, we have to always keep in mind that there exists a clear line of distinction between a secular activity and religious activity which may be undertaken by the State, like providing conveniences and facilities and indulgence of a State in maintenance and propagation of religion or religious denomination.
26. We may also make a reference to yet another judgment of Hon'ble Supreme Court in the case of *State of Gujarat and another v. Islamic Relief Committee, Gujarat and others [(2018) 13 SCC 687]*. Dealing with a situation of damage, destruction and desecration of religious places and institutions in communal riots, Hon'ble Supreme Court repelled the submissions raised on behalf of the State that the State cannot be commanded to repair or restore the places of worship as any such act on the part of the State shall create a dent in the secular fabric of our society. Hon'ble Supreme Court further repelled the submissions made on behalf of the State that the expenditure in such a situation for repair and restoration of any place of worship is impermissible in view of Article 27 of the Constitution. Accordingly, a Scheme for such purpose was approved by

Hon'ble Supreme Court which permitted the State to undertake repair and restoration of places of worship which were damaged, destructed and desecrated during communal riots.

27. For the reasons aforesaid, we find that the petitioner in this case has completely misread the provisions of Government Order/Letter dated 10.03.2023. We are, thus, not persuaded to interfere in the P.I.L. which is hereby *dismissed*.

28. However, there will be no order as to costs.

Order Date :- 22.03.2023

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