

## **Chief Justice's Court**

**Case :-** PUBLIC INTEREST LITIGATION (PIL) No. - 699 of 2023

**Petitioner :-** Rajeev Kumar Yadav

**Respondent :-** State Of Up And 3 Others

**Counsel for Petitioner :-** Akhilesh Kumar Gupta, Rakesh Kumar Gupta

**Counsel for Respondent :-** C.S.C.

**Hon'ble Pritinker Diwaker, Chief Justice**

**Hon'ble Saumitra Dayal Singh, J.**

1. Mr Rakesh Kumar Gupta, learned counsel for petitioner. Mr Manish Goyal, learned Additional Advocate General, assisted by Mr A.K. Goyal, learned Additional Chief Standing Counsel and Ms. Akanksha Sharma, learned Standing Counsel.

2. Present writ petition has been filed describing it as a public interest litigation. It seeks to challenge the Government Order no.772 dated 10.3.2023 issued by the Principal Secretary, Government of U.P. Further direction has been sought to restrain the State respondents from giving effect to such Government Order. Punishment is also sought to be awarded to respondent no.4 namely Principal Secretary, Government of U.P. at Lucknow for having allegedly committed a "crime against the Constitution of India".

3. Learned Additional Advocate General has raised a preliminary objection. He stated, on similar facts, challenging the same Government Order, ***PIL No. 210 of 2023 (Motilal Yadav vs State of U.P.)*** has already been decided by this Court sitting at Lucknow vide order dated 22.3.2023.

4. On the other hand, learned counsel for the petitioner advanced his submissions and later submitted written submissions, as also the supplementary affidavit dated 29.3.2023 and 31.3.2023 respectively.

5. In short, it is the submission of learned counsel for the petitioner, being a secular nation since its formation and that status being duly recognized under the Constitution of India, the State may not favour any particular religion as there is no State religion. That being the basic structure of the Constitution, the Government Order that seeks to overrun that constitutional scheme, is invalid and unenforceable. Reliance has been placed on the decision of the Supreme Court in **S.R. Bommai vs Union of India, (1994) 3 SCC 1, Ashwini Kumar Upadhyay vs Union of India & Ors, (2023) SSS OnLine SC 207** and **His Holiness Kesavananda Bharati Sripadagalvaru vs State of Kerala, (1973) 4 SCC 225.**

6. Insofar as reliance is being placed on the decision of the Supreme Court in **Ashwini Kumar Upadhyay (supra)**, there can be no denying the fact that the Constitution of the republic envisages a secular republic. At the same time, it may not be forgotten that in **Ashwini Kumar Upadhyay (supra)**, that petitioner - Ashwini Kumar Upadhyay had sought direction, to constitute "Renaming Commission" so as to find out the original names of 'ancient historical cultural religious places' that were claimed to be named after barbaric foreign invaders. In that context, the Supreme Court observed as under:

*"8. We are of the view that the questions of law raised by petitioner do not arise.*

*9. The present and future of a country cannot remain a prisoner of the past. The governance of Bharat must conform to Rule of law, secularism, constitutionalism of which Article 14 stands out as the guarantee of both equality and fairness in*

*the State's action.*

*10. The founding fathers contemplated India to be a republic which is not merely to be conflated to a body polity having an elected President which is the conventional understanding. But it also involves ensuring rights to all sections of people based on it being a democracy. It is important that the country must move forward. For achieving the sublime goals which are enshrined in Part IV - that is the Directive Principles, but bearing in mind the fundamental rights also guaranteed in Part III of the Constitution, which have been described as the two wheels of the chariot of the State, both of which are indispensable, for the smooth progress of the nation, actions must be taken which bond all sections of the society together.*

*11. The history of any nation cannot haunt the future generations of a nation to the point that succeeding generations become prisoners of the past. The golden principle of fraternity which again is enshrined in the preamble is of the greatest importance and rightfully finds its place in the preamble as a constant reminder to all stakeholders that maintenance of harmony between different sections alone will lead to the imbibing of a true notion of nationhood bonding sections together for the greater good of the nation and finally, establish a sovereign democratic republic. We must constantly remind ourselves that courts of law, as indeed every part of the 'State', must be guided by the sublime realisation, that Bharat is a secular nation committed to securing fundamental rights to all sections as contemplated in the Constitution.*

*12. We are, therefore, of the view that the reliefs which have been sought for should not be granted by this Court acting as the guardian of fundamental rights of all under Article 32 of the Constitution of India and bearing in mind the values which a Court must keep uppermost in its mind - the preamble gives us clear light in this direction.*

*13. The writ petition is dismissed."*

7. The above discussion would clearly show, insofar as the issue involved in the present case is concerned, it has no direct or material bearing with that involved in **Ashwini Kumar Upadhyay (supra)**. To the secular nature of the republic, there can be no doubt. Insofar as the decision in the case of **S.R. Bommai (supra)** is concerned, it recognizes secularism as a positive concept of equal treatment of all religion.

8. Then, as noted above, in **Ashwini Kumar Upadhyay (supra)**, in **State of Karnataka vs Praveen Bhai Thogadia (Dr.) (2004) 4 SCC 684**, secularism has to be treated as part of the fundamental law and an unalienable segment of the basic structure of the country's political system.

9. Then, it was further taken note, in **M.P. Gopalakrishnan Nair Vs. State of Kerala; (2005) 11**

**SCC 45**, the Constitution prohibits the establishment of a theocratic State. Also, the State is prohibited to identify itself with or to favour any particular religion. The term secularism used under the Indian Constitution means equal status to all religions without prohibition or discrimination towards anyone or other religion.

10. The above discussion defines the test to be applied to individual facts that may be brought before this Court to test if an action taken by the State (that may be challenged in those facts), falls foul with the constitutional scheme that guarantees secularism as an inalienable part of the basic structure of the constitution.

11. At the same time, we are compelled to observe, in the facts that have been brought before us in the present case, a co-ordinate bench of this Court in **Motilal Yadav (supra)**, has applied the same test to reach the conclusion that the Government Order dated 10.03.2023 does not cause the effect of favouring any activity promoting any religion or religious denomination. Rather, the said Government Order has been found issued, to publicize different development works and developments of basic amenities by the Tourism Department of the State Govt. and other departments of the State Government, at various temples. No amount has been found payable to any priest or for any purpose associated with the activities at any temple.

12. A co-ordinate bench having already taken one view in the matter, we find no compelling reasoning to take different view as may require reference to be made to a larger bench, in the present facts. Here, it may also noted, as per Clause 9 of the impugned Government Order, total expenditure contemplated under the Government Order

may not exceed Rs. 75,00,000/- at the rate of Rs. 1,00,000/- per district of the State, to be spent on payment to artists at no fixed rates, irrespective of total number of artists. In absence of any further disclosure made in the writ petition, that amount may be too minuscule or insignificant to warrant any further consideration in present facts.

13. In the entirety of the facts and circumstances of the case noted above, specially the view already expressed by a co-ordinate Bench of this Court, we are not inclined to entertain the present petition to offer any interference, at this stage.

14. Leaving open any further challenge to arise in appropriate case, in appropriate facts, at any appropriate stage, the present petition is also **dismissed**.

**Order Date :- 28.3.2023**

Prakhar

(S. D. Singh, J.) (Pritinker Diwaker, C.J.)