

2025 LiveLaw (SC) 662

IN THE SUPREME COURT OF INDIA
CIVIL/CRIMINAL ORIGINAL JURISDICTION
B.V. NAGARATHNA; J., SATISH CHANDRA SHARMA; J.
WRIT PETITION(S)(CIVIL) NO(S). 250/2007; MAY 15, 2025
NANDINI SUNDAR & ORS. versus STATE OF CHHATTISGARH

Constitution of India - Doctrine of Separation of Powers - Principle of Checks and Balances – *ultra vires* - Contempt of Court - Law made by Parliament or Legislature Held, that passing of an enactment after the order of this Court by the legislature of State of Chhattisgarh cannot be said to be an act of contempt of the order passed by this Court. Every state legislature has plenary powers to pass an enactment and so long as the said enactment has not been declared to be *ultra vires* the Constitution or, in any way, *null and void* by a Constitutional Court, the said enactment would have the force of law. Interpretative power of a Constitutional Court does not analyze a situation of declaring exercise of legislative functions and passing of an enactment as an act of contempt of court. Legislative function includes power to enact as well as amend laws. Legislature has power to pass a law, to remove the basis of a judgement or to validate a law which has been struck down by a Constitutional Court by amending or varying it to give effect to judgement of Court. This is the core of doctrine of separation of powers. Any law made by the Parliament or a State legislature cannot be held to be an act of contempt of a court. Promulgation of an enactment is only an expression of the legislative function and cannot be said to be an act in contempt unless it is established that the statute so enacted is bad in law constitutionally. Any piece of legislation enacted by a legislature can be assailed within the manner known to law and that is by mounting a challenge against its validity on the twin prongs of legislative competence or constitutional validity. Relied on *Indian Aluminium Co. vs. State of Kerala* (1996) 7 SCC 637. Held, that prayers in contempt petition are in the nature of writs of mandamus which cannot be granted as such in Contempt petition. Petitions contending that State of Chhattisgarh's enactment of the Chhattisgarh Auxiliary Armed Police Force Act, 2011 amounted to contempt of court were dismissed.

WITH W.P.(Crl.) No. 119/2007 AND CONMT. PET. (C) No. 140/2012

For Petitioner(s) Ms. Nitya Ramakrishnan, Sr. Adv. Ms. Stuti Raj, Adv. Ms. Sumita Hazarika, AOR

For Respondent(s) Ms. Sushma Suri, AOR Mr. Tushar Mehta, Solicitor General Mr. K M Nataraj, A.S.G. Mr. Rajat Nair, Adv. Mrs. Prerna Dhall, Adv. Mr. Ambuj Swaroop, Adv. Mr. Shivam Ganeshia, Adv. Mr. Prashant Singh, AOR Mr. Tushar Mehta, Solicitor General Mr. K.M.Nataraj, A.S.G. Mr. Kanu Agrawal, Adv. Mr. Apoorv Kurup, Adv. Mr. Shiv Mangal Sharma, Adv. Ms. Sunita Sharma, Adv. Mr. Rajat Nair, Adv. Mr. Prashant Singh-(ii), Adv. Mr. Arvind Kumar Sharma, AOR Mr. Tushar Mehta, Solicitor General Mr. K.M. Nataraj, A.S.G. Mr. Mukesh Kumar Maroria, AOR Mr. Chitransh Sharma, Adv. Mrs. Sunita Sharma, Adv. Mr. Shiv Mangal Sharma, Adv. Mr. Kanu Agarwal, Adv. Mr. Apoorva Kurup, Adv. Mr. Prashant Singh-ii, Adv. Mr. Rajat Nair, Adv.

ORDER

We have heard learned senior counsel for the petitioners and learned ASG appearing for the respondent-CBI and State of Chhattisgarh at length.

2. We have perused the order of this Court passed in this very case dated 05.07.2011 [*Nandini Sunder vs. State of Chhattisgarh reported in (2011) 7 SCC 547*].

3. Learned senior counsel Ms. Nitya Ramakrishnan appearing for petitioners submitted that although the aforesaid order of this Court had recorded many directions, the fact remains that the said Writ Petitions have not yet been concluded or closed. They are still pending before this Court. In this regard, our attention was drawn to paragraph 90 of the said order as well as paragraphs 95 and 96 of the said order. For immediate reference, the said paragraphs read as under:

“90. We order that:

(i) The State of Chhattisgarh immediately cease and desist from using SPOs in any manner or form in any activities, directly or indirectly, aimed at controlling, countering, mitigating or otherwise eliminating Maoist/Naxalite activities in the State of Chhattisgarh;

(ii) The Union of India to cease and desist, forthwith, from using any of its funds in supporting, directly or indirectly the recruitment of SPOs for the purposes of engaging in any form of counter-insurgency activities against Maoist/Naxalite groups;

(iii) The State of Chhattisgarh shall forthwith make every effort to recall all firearms issued to any of SPOs, whether current or former, along with any and all accoutrements and accessories issued to use such firearms. The word “firearm” as used shall include any and all forms of guns, rifles, launchers, etc., of whatever calibre;

(iv) The State of Chhattisgarh shall forthwith make arrangements to provide appropriate security, and undertake such measures as are necessary, and within bounds of constitutional permissibility, to protect the lives of those who had been employed as SPOs previously, or who had been given any initial orders of selection or appointment, from any and all forces, including but not limited to Maoists/Naxalites; and

(v) The State of Chhattisgarh shall take all appropriate measures to prevent the operation of any group, including but not limited to Salwa Judum and Koya Commandos, that in any manner or form seek to take law into private hands, act unconstitutionally or otherwise violate the human rights of any person. The measures to be taken by the State of Chhattisgarh shall include, but not be limited to, investigation of all previously inappropriately or incompletely investigated instances of alleged criminal activities of Salwa Judum, or those popularly known as Koya Commandos, filing of appropriate FIRs and diligent prosecution.

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95. We order the Central Bureau of Investigation to immediately take over the investigation of, and taking appropriate legal actions against all individuals responsible for:

(i) the incidents of violence alleged to have occurred in March 2011, in the three villages, Morpalli, Tadmetla and Timmapuram, all located in Dantewada District or its neighbouring areas;

(ii) the incidents of violence alleged to have been committed against Swami Agnivesh, and his companions, during their visit to State of Chhattisgarh in March 2011.

96. We further direct the Central Bureau of Investigation to submit its preliminary status report within six weeks from today. We also further direct, the State of Chhattisgarh and the Union of India, to submit compliance reports with respect to all the orders and directions issued today within six weeks from today. List for further directions in the first week of September, 2011.”

4. It was submitted that having regard to what has been directed by this Court and the object and purpose of the directions, the matters have been kept pending before this Court since the year 2007 in order to ensure that all the prayers sought for in these Writ Petitions are ultimately granted.

5. Learned senior counsel Ms. Nitya Ramakrishnan also drew our attention to the fact that despite this Court having the writ petitions pending, there has been contempt of the Order of this Court inasmuch as the State of Chhattisgarh has legislated the Chhattisgarh

Auxiliary Armed Police Force Act, 2011 (for short “the Act”). It was argued that the very legislation of the said enactment is an act of contempt of the order of this Court by the State of Chhattisgarh.

6. In the circumstances, learned senior counsel contended that several applications have been filed in these Writ Petitions and a Contempt Petition has also been filed and hence, the matters may be heard on those applications as well as the Contempt Petition.

7. In this regard, learned senior counsel submitted that the petitioners herein have filed these Writ petitions and Contempt Petition purely in public interest as they are, *firstly*, interested in the rehabilitation of the persons who were and are constituted as an armed force (SPO); *secondly*, by the enactment of the Act by the State of Chhattisgarh, there has been a contempt and violation of order of this Court; and, *thirdly*, although a direction was issued to the National Human Rights Commission (NHRC) to submit their affidavit, there has been no such affidavit which has been filed and there is noncompliance on their part too.

8. In the above premise, learned senior counsel submitted that these matters may be kept pending to be heard on the applications filed by the petitioners and necessary orders may be made against the respondent.

9. *Per contra*, learned ASG Sri K.M. Nataraj, appearing for the Union of India as well as the State of Chhattisgarh drew our attention to paragraph 96 of the aforesaid judgment to contend that six weeks’ time was granted to the Central Bureau of Investigation (‘CBI’) to submit its preliminary status report and a further direction was issued to the State of Chhattisgarh and Union of India to submit compliance reports with respect to all orders and directions issued in the said order within six weeks from the date of that order and therefore, the matter was ordered to be listed in the first week of September, 2011 only to ensure that the said reports were filed before this Court. He submitted that the said reports have been filed before this Court and therefore there is no necessity for having these Writ Petitions and the Contempt Petition pending for consideration on any further issue which may have arisen subsequent to the aforesaid order. In this regard learned ASG pointed out that the pleadings and the prayers made by the petitioners in the Writ Petitions as well as in the Contempt Petition may be considered to arrive at the only possible conclusion that the *lis* no longer survives and therefore, appropriate orders may be made by this Court for conclusion and disposal of these proceedings.

10. In light of the above submissions, we have perused the Writ Petitions as well as the Contempt Petition and the prayers sought for in the said petitions, which read as under:

1 W.P. (C) No.250/2007

“Prayers:

That the petitioner has not filed any other petition seeking similar relief before any other Court in India including this Hon’ble Court. In the circumstances, it is, therefore, most respectfully prayed that this Hon’ble Court may graciously be pleased to:

(a) Direct the Respondent to refrain from supporting, associating, encouraging or promoting, in any manner whatsoever, the activities of the ‘Salwa Judum’ movement.

(b) Direct an independent and impartial enquiry under the aegis of the Supreme Court into the incidents of killings, abductions, rapes, arson and gross violation of human rights by the security forces and the ‘Salwa Judum’ activists, in endeavouring to counter the Naxalites from Dantewara district of State of Chhattisgarh, as well as investigate the killings by the Naxalites;

(c) Direct the registration of FIRs and the prosecution of those implicated by such independent and impartial enquiry in accordance with law;

- (d) Direct the Respondent to give compensation to all those who have suffered from destruction of property, killing of relatives, rape and other abuses by the Salwa Judum activists at part with the compensation given to victims of Naxalite violence;
- (e) Direct the Respondent to effectively rehabilitate those who wish to return to their own villages;
- (f) Direct the Respondent not to appoint minors as Special Police Officers (SPOs) nor allow them to participate in any manner with the 'Salwa Judum' movement; and
- (g) Pass any other order or further orders as may be deemed fit and proper in the circumstances of the case."

2 W.P.(CrI.) No. 119/2007

PRAYERS:

"In the premise, it is most respectfully prayed that this Hon'ble Court be pleased to:

- (a) Issue an appropriate writ, direction or order directing the Respondents to refrain from supporting, associating, encouraging or promoting, any any manner whatsoever, the activities of the 'Salwa Judum' movement;
- (b) Issue an appropriate writ, direction or order directing an independent and impartial enquiry under the aegis of the Supreme Court into the incidents of killings abductions, rapes, arson and gross violation of human rights by the security forces and the 'Salwa Judum' activists, in endeavouring to counter the Naxalites from Dantewara district of State of Chattisgarh, as well as investigate the killings by the Naxalites;
- (c) Issue an appropriate writ, direction or order directing the Central Bureau of Investigation to investigate criminal offences and register cases against all those implicated in the narratives referred to in this Writ Petition;
- (d) Issue an appropriate writ, direction or order directing the respondents to identify the victims from the narratives in the writ petition, restore them to their homes and grant them compensation;
- (e) Issue an appropriate writ, direction or order directing the respondents to take immediate steps to disband Salwa Judum camps and keep vigilance to ensure that no such camp is set up in future;
- (f) Issue an appropriate writ, direction or order to disband the Special Police Officers and stop the state from arming any member of the public in the districts of Baster, Narainpur, Dantewada and Bijapur;
- (g) Direct protection to the three petitioners herein; and
- (h) Pass such other order/s as this Hon'ble Court deems fit in the interest of justice."

3 Conmt. Pet.(c) No. 140/2012

Prayers:

"In light of the above facts and circumstances, it is prayed that this Hon'ble Court be pleased to:

- a. Initiate contempt proceedings against the contemnors for committing contempt of the directions passed by this Hon'ble Court as contained in the judgment and order dated 5.7.11 and 18.1.11 passed by this Hon'ble Court.
- b. Further prayed that all SPO's against whom complaints have been made not be absorbed into Government service unless the particular obligation to investigate these complaints and file FIR is carried out.
- c. Further prayed that in view of the repeated failure of the Chhattisgarh government to come up with an action plan for compensation, relief and rehabilitation of all categories of affected persons, as well as registration of FIRs and prosecution, the Petitioners' proposed rehabilitation

plan, drawn up under the directions of this Hon'ble Court, be implemented under the aegis of an independent High level Committee under the control and supervision of this Hon'ble Court;

d. Pass such other and further order/orders as this Hon'ble Court may deem fit and necessary in the interests of justice."

11. Having closely perused the prayers made in the Writ Petitions as well as in the Contempt Petition which have been filed by the petitioners herein, we find that those prayers have been crystallized in the form of the order that has been passed by this Court referred to above.

12. Learned senior counsel appearing for the petitioners herein submitted that having regard to the situation that has emerged over the years in the State of Chhattisgarh, it is necessary that all victims be rehabilitated and in that regard the rehabilitation plan has been submitted before this Court by the petitioners herein pursuant to the orders of this Court. Secondly, it was submitted that the legislature of the State of Chhattisgarh has passed the new enactment, pursuant to which certain actions have been taken which is not in consonance with the order of this Court. It was also submitted that the National Human Rights Commission has not responded to the directions of this Court. Hence, appropriate directions may be issued from time to time in these cases.

13. We have heard at length and considered the submissions advanced at the bar. We find that having regard to the situation that has emerged over the decades in the State of Chhattisgarh, it is necessary that specific steps are taken so as to bring about peace and rehabilitation of the areas requiring the attention of the State as well as the Central Government who would have to act in a coordinated manner. We note that it is duty of the State of Chhattisgarh as well as the Union of India, having regard to Article 315 of the Constitution, to take adequate steps for bringing about peace and rehabilitation to the residents of State of Chhattisgarh who have been affected by the violence from whatever quarter it may have arisen.

14. We also observe that the passing of an enactment subsequent to the order of this Court by the legislature of the State of Chhattisgarh cannot, in our view, be said to be an act of contempt of the order passed by this Court. It is observed that every State Legislature has plenary powers to pass an enactment and so long as the said enactment has not been declared to be *ultra vires* the Constitution or, in any way, null and void by a Constitutional Court, the said enactment would have the force of law. However, if any party wishes that the said Act be struck down for being unconstitutional, then legal remedies in that regard would have to be resorted to before the competent Court of law. Indeed, the Judiciary is vested under the Constitution with the power to resolve interpretive doubts and disputes about the validity or otherwise of an enacted law by the Parliament or any State Legislature. However, the interpretative power of a Constitutional Court does not contemplate a situation of declaring exercise of legislative functions and passing of an enactment as an instance of a contempt of a Court. We must remember that central to the legislative function is the power of the legislative organ to enact as well as amend laws. Any law made by the Parliament or a State legislature cannot be held to be an act of contempt of a Court, including this Court, for simply making the law. A legislature has, *inter alia*, the powers to pass a law, to remove the basis of a judgment or in the alternative, validate a law which has been struck down by a Constitutional Court by amending or varying it so as to give effect to the judgment of a Constitutional Court which has struck down a portion of an enactment or for that matter the entire enactment. This is the core of the doctrine of separation of powers and must always be acknowledged in a constitutional democracy such as ours. This doctrine also emphasises on the principle of checks and

balances under our Constitution which is a healthy aspect of distribution of powers, particularly legislative powers. Any piece of legislation enacted by a legislature can be assailed within the manner known to law and that is by mounting a challenge against its validity on the twin prongs of legislative competence or constitutional validity.

15. In Indian Aluminium Co. vs. State of Kerala, (1996) 7 SCC 637, this Court observed that Courts in their concern and endeavour to preserve judicial power equally must be guarded to maintain the delicate balance devised by the Constitution between the three sovereign functionaries. In order to ensure that rule of law permeates to fulfil constitutional objectives of establishing an egalitarian social order, the balance between the respective sovereign functionaries must always be delicately maintained.

16. The promulgation *simpliciter* of an enactment is only an expression of the legislative function and cannot be said to be an act in contempt of a Court unless it is first established that the statute so enacted is bad in law constitutionally or otherwise. We therefore do not commend the filing of a Contempt Petition for the purpose of assailing the validity of the aforesaid enactment.

17. We have also noted other prayers sought for in the Contempt Petition and find that they are in the nature of writs of mandamus being sought in the Contempt Petition which cannot be granted as such. In the circumstances, we find no reason to entertain the Contempt Petition as such. We dispose of the Contempt Petition having regard to the fact that the prayers sought for therein cannot be granted by us in the form of a Contempt Petition.

18. As far as the prayers sought for in the two Writ Petitions are concerned, we have already stated that those prayers have been considered by this Court and have been crystallized in the form of the aforesaid order, the relevant portions of which have been extracted above. In the circumstances, we find that the writ petitions would no longer survive for further consideration by this Court.

19. We also note that there has been compliance of the directions issued by this Court in paragraph 96 of the aforesaid order inasmuch as the said reports have been submitted by the authorities who were directed to submit the said reports.

20. As far as the grievance of the petitioners with regard to NHRC not responding to the directions of this Court is concerned, we find that the said grievance would no longer survive inasmuch as we are disposing of these matters and hence, we do not wish to take further note of the said grievance in these cases.

21. In view of the aforesaid discussion, the Writ Petitions as well as the Contempt Petition stand disposed.

Pending application(s), if any, shall stand disposed of.