

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

WRIT PETITION(CIVIL) NO.735 OF 2014

HARBHAJAN SINGH

.....APPELLANT(S)

VERSUS

STATE OF HARYANA & ORS.

.....RESPONDENT(S)

W I T H

WRIT PETITION (CIVIL) NO. 1116 OF 2019

O R D E R

HEMANT GUPTA, J.

1. At the outset, it is stated that this order is being passed to address the preliminary objection raised by Mr. Shyam Divan, learned senior counsel for the State of Haryana, and by Mr. Ranjit Kumar for the Haryana Sikh Gurudwara Management Committee regarding maintainability of the present writ petitions.

2. The challenge in the writ petitions is to the Haryana Sikh Gurdwara (Management) Act, 2014, on the ground that it is violative of the Sikh Gurdwara Act, 1925, the State Reorganisation Act, 1956, the Punjab Reorganisation Act, 1966 as well as the Inter-State Corporation Act, 1957.
3. The maintainability of these writ petitions is questioned, primarily on two grounds, namely, **(i)** that there was no infringement of fundamental rights enabling the petitioners to invoke Article 32 of the Constitution of India; and **(ii)** that by arraying the States of Punjab and Himachal Pradesh as parties to the writ petitions, the writ petitioners are virtually inviting other States to comment upon the legislative competency of the State of Haryana, which is actually an abuse of the process of law.
4. Mr. Shyam Divan, learned senior counsel appearing for the State of Haryana relied upon **Chiranjit Lal Chowdhuri** vs.

***Union of India & Ors.*¹, *D.A.V. College, etc. etc.* v. *State of Punjab & Ors.*² and *Ramdas Athawale* v. *Union of India & Ors.*³, in support of his above contentions.**

5. The petitioners belong to a religious minority in the State of Haryana, a fact which is not disputed by Mr. Divan. As a minority, the petitioners have a right to profess, practice and propagate religion as secured under Article 25 of the Constitution of India and in terms of Article 26 of the Constitution of India, such minority has a right to establish and maintain institutions for religious and charitable purposes; to manage its own affairs in matters of religion; to own and acquire movable and immovable property; and to administer such property in accordance with law. Articles 25 and 26 of the Constitution of India read thus:

“25. Freedom of conscience and free profession, practice and propagation of religion.—(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

1AIR 1951 SC 41

2(1971) 2 SCC 269

3(2010) 4 SCC 1

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.—The wearing and carrying of *kirpans* shall be deemed to be included in the profession of the Sikh religion.

Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

26. Freedom to manage religious affairs.—Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law.”

6. The challenge in ***Chiranjit Lal Chowdhuri*** (supra) was in respect of the acquisition of the Sholapur Spinning and Weaving Company Ltd. by a shareholder who was holding one ordinary share. It was held that Article 32 is not directly concerned with the determination of constitutional validity of particular legislative enactments. It aims at the enforcement of

fundamental rights guaranteed by the Constitution. It was held that the right which could be enforced under Article 32 must ordinarily be the rights of the petitioner himself who complains of infraction of such rights and approaches the Court for relief. This Court held as under:

“46. The application before us under Article 32 of the Constitution is on behalf of an individual shareholder of the company. Article 32, as its provisions show, is not directly concerned with the determination of constitutional validity of particular legislative enactments. What it aims at is the enforcing of fundamental rights guaranteed by the Constitution, no matter whether the necessity for such enforcement arises out of an action of the executive or of the legislature. To make out a case under this article, it is incumbent upon the petitioner to establish not merely that the law complained of is beyond the competence of the particular legislature as not being covered by any of the items in the legislative lists, but that it affects or invades his fundamental rights guaranteed by the Constitution, of which he could seek enforcement by an appropriate writ or order. The rights that could be enforced under Article 32 must ordinarily be the rights of the petitioner himself who complains of infraction of such rights and approaches the court for relief. This being the position, the proper subject of our investigation would be what rights, if any, of the petitioner as a shareholder of the company have been violated by the impugned legislation. A discussion of the fundamental rights of the company as such would be outside the purview of our enquiry. It is settled law that in order to redress a wrong done to the company, the action should prima facie be brought by the company itself. It cannot be said that this course is not possible in the circumstances of the present case. As the law is alleged to be unconstitutional, it is open to the old Directors of the company who have been ousted from their position by reason of the enactment to maintain that they are Directors still in the eye of law, and on that footing the majority of shareholders can also assert the rights of the company as such. None of them, however,

have come forward to institute any proceeding on behalf of the company. Neither in form nor in substance does the present application purport to be one made by the company itself. Indeed, the company is one of the respondents, and opposes the petition.

47. As regards the other point, it would appear from the language of Article 32 of the Constitution that the sole object of the article is the enforcement of fundamental rights guaranteed by the Constitution...”

7. In ***D.A.V. College*** (supra) the challenge was to the constitutional validity of certain provisions of Guru Nanak University (Act No. 21 of 1969). This Court examined the question as to what constitutes a religious or linguistic minority and how is it to be determined. The petitioners claimed that they belonged to a minority (*adherents of Arya Samaj*) based on religion and language and that, therefore, they questioned the compulsory affiliation of the University. This Court found that the Hindus of Punjab are a religious minority in the State and have a distinct script of language, but however, it was found that none of the provisions of the Act offended the guaranteed rights of the petitioners. It was concluded that the impugned Act did not affect the fundamental rights of the petitioners, and, hence, it was

considered not necessary to go into the question of legislative competence. This Court held as under:

“44. We have already found that none of the provisions of the Act offend any fundamental rights of the Petitioners. But it contended on behalf of the petitioners that in a petition under Article 32 once it is alleged and a prima facie case is made out that the fundamental rights of a citizen are threatened or violated this Court is not only bound to entertain it for determining to what extent the allegation is valid but is also bound to go into the question if raised that the law under which it is alleged that his fundamental right is infringed is invalid on the ground of want of legislative competence. *There are two facets to this submission. Firstly whether ultimately any fundamental right in fact is threatened or violated, so long as a prima facie case of such a threat or violation is made out a petition under Article 32 must be entertained. Secondly once it is entertained irrespective of whether it is found ultimately that in fact no fundamental rights of the petitioners are invaded the vires of the legislation or the competence of the legislature to enact the impugned legislation must be gone into and determined. While the first proposition is valid, the second is not.*

46. It is apparent therefore that the validity or the invalidity of the impugned law, on the ground of legislative competence should purport to infringe the fundamental rights of the petitioner as a necessary condition of its being adjudicated. But if in fact the law does not, even on the assumption that it is valid, infringe any fundamental rights, this Court will not decide that question in a petition under Article 32. The reason for it is obvious, namely that no petition under Article 32, will be entertained if fundamental rights are not affected and if the impugned law does not affect the fundamental rights it would be contrary to this principle to determine whether that law, in fact, has legislative competence or not.”

8. In ***Ramdas Athawale*** (supra), a writ petition was filed before this Court to challenge the session of the Lok Sabha by notice

dated 20.1.2004. This Court *inter alia* held that the challenge is to the validity of the proceedings of the Lok Sabha which no longer survived in view of the dissolution of the House. This Court further held that the validity of the Speaker's decision adjourning the House *sine die* and later directing to resume its sittings cannot be inquired into on the ground of irregularity of procedure. This Court held as under:

“46. It is equally well settled that Article 32 of the Constitution guarantees the right to a constitutional remedy and relates only to the enforcement of the right conferred by Part III of the Constitution and unless a question of enforcement of a fundamental right arises, Article 32 does not apply. It is well settled that no petition under Article 32 is maintainable, unless it is shown that the petitioner has some fundamental right. In *Northern Corpn. v. Union of India* [(1990) 4 SCC 239] this Court has made a pertinent observation that when a person complains and claims that there is a violation of law, it does not automatically involve breach of fundamental right for the enforcement of which alone Article 32 is attracted.”

9. But the above decisions do not wholly support the stand of the respondents. This Court in ***D.A.V. College*** (supra) has held that there are two aspects. The first is whether ultimately any fundamental right in fact is threatened or violated. So long as a *prima facie* case of such a threat or violation is made out, a petition under Article 32 must be entertained. Second, once it

is entertained, irrespective of whether it is found ultimately that in fact no fundamental rights of the petitioners are invaded, the vires of the legislation or the competence of the legislature to enact the impugned legislation must be gone into and determined. While the first proposition is valid, the second is not. Thus, the entertainment of the writ petition does not mean that this Court has to examine the impugned legislation or legislative competence if the same is not found to be infringing fundamental rights.

10. The second ground of attack to the maintainability of the writ petitions revolves around the impleadment of the States of Punjab and Himachal Pradesh, which may give an opportunity to those States to comment upon the competence of the Haryana State Legislature. Once those other States join the chorus in questioning the legislative competence of the State of Haryana, it would become an inter-State dispute, for the resolution of which, the mechanism under Article 131 alone should be resorted to.

11. But as of now, the above argument is presumptuous. Those other States have not questioned the legislative competence of the State of Haryana. There is no inter-State dispute on hand as of now. Since SGPC controls even Gurdwaras situate in those States also, the petitioners thought fit to implead those States as parties.
12. In view thereof, we find that the objection about maintainability of the writ petitions is not sustainable. The same is declined. Hence, both the writ petitions under Article 32 for the alleged violation of their fundamental rights are required to be considered on merits.

.....J.
(HEMANT GUPTA)

.....J.
(V. RAMASUBRAMANIAN)

**NEW DELHI;
MARCH 29, 2022.**

ITEM NO.111

COURT NO.11

SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s). 735/2014

HARBHAJAN SINGH

Petitioner(s)

VERSUS

STATE OF HARYANA & ORS.

Respondent(s)

(IA No. 1/2014 - EX-PARTE STAY, IA No. 52199/2019 - INTERVENTION/
IMPLEADMENT, IA NO.2/2014 - FOR TRANSPOSITION OF RESPONDENT NO. 3 AS
PETITIONER), IA NO.93215/2021 - FOR EXEMPTION FROM FILING AFFIDAVIT,
IA NO.91961/2021 - PERMISSION TO FILE ADDITIONAL AFFIDAVIT

WITH

SLP(C) No.4733/2022
(FOR ADMISSION AND I.R.)

W.P.(C) No. 1116/2019 (X)
(IA No. 132149/2019 - EX-PARTE STAY, IA No. 155616/2019 - PERMISSION
TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA NO. 89575/2021 - FOR
IMPLEADMENT AS PARTY PETITIONER, IA NOS.6870/2022 & 6871/2022 -
PERMISSION TO FILE TRUE COPY OF INTER STATE CORPORATION ACT 1975 AND
EXEMPTION FROM FILING ATTESTED AFFIDAVIT)

Date : 29-03-2022 These matters were called on for hearing today.
[The reasoned order is uploaded on 02.04.2022]

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

For Petitioner(s) Mr. A.K. Ganguli, Sr. Adv.
Mr. Ritesh Khatri, AOR

Mr. Gagan Gupta, AOR
Mr. Ananta P. Mishra, Adv.

Ms. Usha Nandini V., AOR

For Respondent(s) Mr. Shyam Divan, Sr. Adv.
Mr. Anil Grover, Sr. AAG Haryana/Adv.
Mr. Deepak Thukral, AAG Haryana/Adv.
Dr. Hemant Gupta, AAG Haryana/Adv.
Mr. Sanjay Kumar Visen, AOR
Ms. Babita Mishra, Adv.
Ms. Payal Gupta, Adv.

Mr. Ranjit Kumar, Sr. Adv.
Mr. Siddharth Batra, AOR
Ms. Archana Yadav, Adv.
Ms. Shivani Chawla, Adv.
Mr. Chinmay Dubey, Adv.

Mr. Tushar Mehta, SG (N.P.)
Mr. K.M. Nataraj, ASG (N.P.)
Mrs. V. Mohana, Sr. Adv.
Mr. Shirin Khajuria, Adv.
Mr. Rajat Nair, Adv.
Mr. Anirudh Bakhru, Adv.
Mr. Sanskriti Pathak, Adv.
Mr. Chetan Joshi, Adv.

Mr. Sanchar Anand, Adv.
Mrs. Kamaldeep Gulati, AOR

Ms. Uttara Babbar, AOR

Mr. Gaurav Liberhan, AAG/Punjab
Ms. Ranjeeta Rohatgi, AOR

Mr. Tushar Bakshi, AOR

Mr. Abhinav Mukerji, AOR

Mr. Deepak Goel, AOR

UPON hearing the counsel the Court made the following
O R D E R

The reasoned order is placed on the file and is uploaded on
02.04.2022.

(SWETA BALODI)
COURT MASTER (SH)

(RENU BALA GAMBHIR)
COURT MASTER (NSH)

(Signed order is placed on the file)

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COURT NO.11

SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

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HARBHAJAN SINGH

Petitioner(s)

VERSUS

STATE OF HARYANA & ORS. ETC.

Respondent(s)

(IA No. 1/2014 - EX-PARTE STAY, IA No. 52199/2019 - INTERVENTION/
IMPLEADMENT, IA NO.2/2014 - FOR TRANSPOSITION OF RESPONDENT NO. 3 AS
PETITIONER), IA NO.93215/2021 - FOR EXEMPTION FROM FILING AFFIDAVIT,
IA NO.91961/2021 - PERMISSION TO FILE ADDITIONAL AFFIDAVIT

WITH

SLP(C) No.4733/2022

(FOR ADMISSION AND I.R.)

W.P.(C) No. 1116/2019 (X)

(IA No. 132149/2019 - EX-PARTE STAY, IA No. 155616/2019 - PERMISSION
TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA NO. 89575/2021 - FOR
IMPLEADMENT AS PARTY PETITIONER, IA NOS.6870/2022 & 6871/2022 -
PERMISSION TO FILE TRUE COPY OF INTER STATE CORPORATION ACT 1975 AND
EXEMPTION FROM FILING ATTESTED AFFIDAVIT)

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HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

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Ms. Ranjeeta Rohatgi, AOR

Mr. Tushar Bakshi, AOR

Mr. Abhinav Mukerji, AOR

Mr. Deepak Goel, AOR

UPON hearing the counsel the Court made the following
O R D E R

W.P. (C) No.735/2014 and SLP(C) No.4733/2022 are taken on
Board.

We have heard arguments of Mr. Shyam Divan, learned senior counsel appearing for the State of Haryana and Mr. Ranjit Kumar, learned senior counsel appearing for the Haryana Sikh Gurdwara Management Committee.

After hearing the arguments of learned counsel for the parties, we find that the writ petitions under Article 32 of the Constitution of India are maintainable as it affects the right of a minority to establish and manage the religious institution. However, detailed reasons will follow.

List all the three matters on the date already fixed i.e. 05.04.2022 for final hearing on the top of the Board.

(SWETA BALODI)
COURT MASTER (SH)

(RENU BALA GAMBHIR)
COURT MASTER (NSH)