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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 1851/2021

SARVADAMAN SINGH OBEROI Petitioner

Through: Petitioner in person.

versus

GOVT OF NCT OF DELHI AND ORS Respondents

Through: Mr. Sanjoy Ghose, Advocate for
respondent No.1/ GNCTD.

Mr. Anil Soni, CGSC for respondent/
UOI.

Mr. Shreeyash V. Lalit, Advocate for
Mr. Rajshekhar Rao, Advocate for
respondent No.5/ DHC.

Ms. Shobhana Takiar, Advocate for
respondent No.7/ DDA.

Mr. Jasmeet Singh, CGSC and
Mr. Srivats Kaushal, Advocate for
respondent No.8/ AFT.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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15.02.2021

1. At the outset, we find that several parties have been impleaded as party respondents who are neither necessary nor proper parties in the present petition. Accordingly, respondents No.3 to 10 are deleted from the array of respondents. Amended memo of parties be filed by the petitioner within a week.

2. The petitioner has preferred the present writ petition to seek the following reliefs:

I. Issue a writ/order/direction in the nature of quo warranto, mandamus or any other appropriate writ / order quashing Delhi Gazette. Pt. IV No. 259 dt. 24.11.2020, Govt. of the NCT of Delhi, N.C.T.D. No. 209 (SG-DL-E-25112020-223298) and/or;

II. Issue a writ/order/direction in the nature of quo warranto, mandamus or any other appropriate writ / order quashing Govt. of the NCT of Delhi Notification F.6/13/2011-Judl./Suptlaw/721-725 dt. 14.06.2011 and/or;

III. Issue a writ/order/direction in the nature of mandamus or any other appropriate writ / order directing Respondents to ensure one Human Rights Court under Section 30 of Act 10 of 1994 in each of the eleven district courts of Delhi in accord with the International Rule of Law which is the mandate of Articles 51 and 253 of the Constitution of India, 1949 read with sub-section (d) & (f) of section 2 of Central Act No. 10 of 1994 within a period of 240 days or lesser period, preferably in seisen of the Learned District & Sessions Judge, as may be in the wisdom of this Hon'ble Court and/or;

IV. Issue a writ/order/direction in the nature of mandamus or any other appropriate writ / order directing Respondents to ensure one Independent Human Rights Prosecutor under Section 31 of Act 10 of 1994 exclusively appointed to examine and process claims of human rights offences for prosecution of appropriate case before the Human Rights Court in each of the eleven district courts of Delhi in accord with the International Rule of Law which is the mandate of Articles 51 and 253 of the Constitution of India, 1949 read with sub-section (d) & (f) of section 2 of Central Act No. 10 of 1994 within a period of 240 days or lesser period, as may be in the wisdom of this Hon'ble Court and/or;

V. Pass any other order as this Hon'ble Court may deem fit

and Proper in the interest of justice.”

3. The submission of the petitioner – who appears in person, in relation to the first two reliefs is that the two notifications under challenge dated 24.11.2020 and 14.06.2011 have been issued by the order and in the name of the Lieutenant Governor of National Capital Territory of Delhi. According to the petitioner, the Lieutenant Governor of National Capital Territory of Delhi is not authorised to issue the said notifications under Section 30 of the Protection of Human Rights Act, 1993. He submits that the power to issue the said notifications is vested in the President of India alone. This submission of the petitioner is premised on his reading of Articles 73(1)(b), 253, 51(c), 246 read with Entry 13 of List-1 of Schedule VII of the Constitution of India. The aforesaid provisions relied upon by Mr. Oberoi are as follows:

“ 51. Promotion of international peace and security. - The State shall endeavour to-

(a) promote international peace and security;

(b) maintain just and honourable relations between nations;

(c) foster respect for international law and treaty obligations in the dealings of organised people with one another; and

(d) encourage settlement of international disputes by arbitration.

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73. Extent of executive power of the Union. - (1) Subject to the provisions of this Constitution, the executive power of the Union shall extend-

(a) to the matters with respect to which Parliament has power

to make laws; and

(b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement:

Provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws.

246. Subject-matter of laws made by Parliament and by the Legislatures of States. - (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in clause (3), Parliament and, subject to clause (1), the Legislature of any State [* * *] also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to clauses (1) and (2), the Legislature of any State [* * *] (4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included [in a State] notwithstanding that such matter is a matter enumerated in the State List.

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253. Legislation for giving effect to international agreements. - Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

Entry 13 of List-1 of Schedule VII of the Constitution of India

13. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.”

4. Mr. Oberoi submits that even though the Protection of Human Rights Act is a law passed by Parliament, the same has been passed in pursuance of Articles 73(1)(b) of the Constitution of India read with Article 253 extracted hereinabove.

5. He has then referred to Section 30 of the Protection of Human Rights Act, 1993, which reads as follows:

“30. Human Rights Courts.—For the purpose of providing speedy trial of offences arising out of violation of human rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a Court of Session to be a Human Rights Court to try the said offences:

Provided that nothing in this section shall apply if—

(a) a Court of Session is already specified as a special court; or

(b) a special court is already constituted, for such offences under any other law for the time being in force.”

6. Mr. Oberoi submits that the expression ‘State Government’ used in Section 30, in relation to NCT of Delhi can only be the Central Government since the NCT of Delhi is a ‘Union Territory’ and not a ‘State’ within the meaning of the Constitution of India.

7. We do not find any merit in this submission of Mr. Oberoi. The

Protection of Human Rights Act is a Central Legislation for which the Parliament draws authority by virtue of Entry 13 of List I – Union List of the VII Schedule to the Constitution of India read with Article 246 of the Constitution of India. Merely because the enactment is a Central Legislation, it does not follow that its implementation can only be undertaken by the Central Government. The enactment itself authorises the State Government to specify in each district the Court of Sessions to be a Human Rights Court for providing speedy trial of offences arising out of violation of human rights with the concurrence of the Chief Justice of the High Court.

8. We may also refer to Section 3(58) of the General Clauses Act, 1897, which defines ‘State’ as follows:

“(58) “State”—

(a) as respects any period before the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean a Part A State, a Part B State or a Part C State; and

(b) as respects any period after such commencement, shall mean a State specified in the First Schedule to the Constitution and shall include a Union territory;”

9. Therefore, for the purposes of Section 30 of the Protection of Human Rights Act, the expression ‘State’ would include the Union Territory. Consequently, we find no merit in the aforesaid submission and the notifications have rightly been issued by and under the orders of the Hon’ble Lieutenant Governor.

10. The further submission of Mr. Oberoi is that no Public Prosecutor has

been appointed for the Human Rights Court in the various districts of NCT of Delhi. Mr.Ghose, who appears for respondent No. 1, wishes to take instructions in this regard and respond.

11. Issue notice qua prayers III & IV only. Let counter-affidavit be filed by the respondents in relation to these two prayers within four weeks.

12. List on 17.08.2021.

VIPIN SANGHI, J

REKHA PALLI, J

FEBRUARY 15, 2021

B.S. Rohella