

IN THE SUPREME COURT OF INDIA
REVIEW JURISDICTION
I.A.No. _____ OF 2019
IN_
R.P.(C) NO.3358/2018 IN W.P.(C) NO. 373/2006

IN THE MATTER OF:

Kantaru Rajeevaru ...Petitioner
versus

Indian Young Lawyers Association
Thr.its General Secretary
Ms.Bhakti Pasrija and Ors ..Respondents

AND IN THE MATTER OF:

Bindu A,
W/o Sh. K.V. Hariharan,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]t

AN APPLICATION FOR DIRECTIONS

TO

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF
THE APPLICANT ABOVENAMED

MOST RESPECTFULLY SHEWETH:

1. The present is an Application for Direction in Review Petition (Civil) No. 3358/2018 in Writ Petition (Civil) No.373/2006. The Applicant is compelled to approach this Hon'ble Court as the State of Kerala has openly taken a stand in defiance of the Judgment and Order dated 28.09.2018 passed by this Hon'ble Court in Writ Petition (Civil) No. 373/2006. State of Kerala has completely ignored the Order of this

Hon'ble Court dated 13.11.2018 in Review Petition (Civil) No. 3358/2018 in Writ Petition (Civil) No. 373/2006 wherein this Hon'ble Court was pleased to observe that there is no stay to the judgment in Writ Petition (Civil) No. 373/2006. ,

2. Applicant herein is a woman, from Dalit background, who has earlier visited and taken darshan at Sabarimala. She has again attempted to visit Sabarimala on 26.11.2019. However, the Applicant was attacked in front of the office of the Commissioner of Police, Ernakulam District, Kerala. Some chemical substances having burning sensation over the body was sprayed at her face. The Police failed to act in time or to give her adequate protection. The Applicant is being attacked by some unlawful elements wherever she goes and the State Government has completely failed to give her adequate protection. The situation is same for any woman aged between 10-50 who wanted to visit Sabarimala, as there is an atmosphere of fear and lawlessness en route Sabarimala. It is submitted that the responsible Government which is duty bound to carry out the directions of this Hon'ble Court cannot be allowed to take flimsy excuses for non-cooperation when any woman wanted to exercise her right to worship at Sabarimala.

FACTS LEADING TO THE PRESENT CASE ARE AS FOLLOWS:

3. A Constitution Bench of this Hon'ble Court by its Judgment and Order dated 28.09.2018 in Writ Petition (Civil) No.373/2006 and connected cases, permitted women of all ages to visit the hilly shrine of Sabarimala in the State of Kerala. The said Judgment titled as Indian

Young Lawyers Association v. State of Kerala & Ors is reported in (2018)

13 Scale 75.

4. A batch of Review Petitions were filed against the said judgment and this Hon'ble Court by its Order dated 13.11.2018 in Review Petition (Civil) No. 3358/2018 in Writ Petition (Civil) No. 373/2006 was pleased to Order:

"Applications for hearing of review petitions in Open Court are allowed. All the Review Petitions along with all pending applications will be heard in Open Court on 22nd January, 2019 before the appropriate Bench. We make it clear that there is no stay of the judgment and order of this Court dated 28th September, 2018 passed in Writ Petition (Civil) No.373 of 2006 (Indian Young Lawyers Association & Ors. v. The State of Kerala & Ors.)."

A true copy of the Order dated 13.11.2018 in Review Petition (Civil) No.3358/2018 in Writ Petition (Civil) No.373/2006 is annexed herewith and marked as **ANNEXURE-P/1 (Page No.21-28).**

5. The State of Kerala is the Respondent No.1 in the Writ Petition No.(Civil) No.373/2006 and therefore the State of Kerala cannot plead ignorance of the Order of this Hon'ble Court.

6. The Applicant in the present Application is the first woman to enter Sabarimala after the historic judgment of 2018. She is herself a lawyer and a law teacher. Apart from being a woman she is also a Dalit. Applicant believes that faith, religion, custom all are always below other

Fundamental Rights. Applicant is not a caste Hindu, but belongs to Dalit community. Her belief is that Dharma Sastha is the deity at Sabarimala. Dharma Sastha had two wives and children. Applicant believes that no one has the right to question her faith. Applicant is motivated by Dalit identity to fight for Constitutional values like gender equality, fraternity etc. Last year Applicant entered the Sabarimala temple following which a purification was conducted. Applicant felt deeply hurt and humiliated. The 'purification' done by Chief Priest was evidencing a form of untouchability as rightly pointed by Hon'ble Dr. Justice Dhananjaya Chandrachud in his concurring view in the judgment in writ petition.

7. Since there were threats to the life of the Applicant and another woman, Kanakadurga who visited Sabarimala, they approached this Hon'ble Court by way of Writ Petition (C) No.66/2019. When the said writ petition was taken up before this Hon'ble Court on 18.01.2019, this Hon'ble Court was pleased to order:

"Having heard Ms. Indira Jaising, learned Senior Counsel appearing for the petitioners and Shri Vijay Hansaria, learned Senior Counsel appearing for the State of Kerala we deem it appropriate to close this writ petition at this stage by directing the State of Kerala to provide adequate/full security to the petitioner Nos. 1 and 2 herein which would be provided to the petitioners round the clock."

A true copy of the Order dated 18.01.2019 passed by this Hon'ble Court in Writ Petition (C) No.66/2019 is annexed hereto and marked as

Annexure P/2 (Page No._____).

8. It is submitted that the Order dated 13.11.2018 passed by this Hon'ble Court in Review Petition (Civil) No. 3358/2018 in Writ Petition (Civil) No. 373/2006 is not varied by any subsequent Order of this Hon'ble Court including the Order dated 06.02.2019 (wherein judgment in Reviews was reserved) or the Order dated 14.11.2019, wherein this Hon'ble Court was pleased to frame certain questions for consideration by a larger Bench and ordered the Review Petitions to be kept pending.

A true copy of the Order dated 06.02.2019 in Review Petition (Civil) No.3358/2018 in Writ Petition (Civil) No.373/2006 is annexed herewith and marked as **ANNEXURE-P/3 (Page No.____).**

A true copy of the Judgment and Order dated 14.11.2019 in Review Petition (Civil) No.3358/2018 in Writ Petition (Civil) No.373/2006 is annexed herewith and marked as **ANNEXURE-P/4 (Page No.____).**

9. Soon after the Order dated 14.11.2019 passed by this Hon'ble Court in Review Petition (Civil) No.3358/2018 in Writ Petition (Civil) No.373/2006, many newspapers reported the stand of the State Government as if there is a de facto stay of the Order of this Hon'ble Court dated 28.09.2018 passed in Writ Petition (Civil) No.373 of 2006.

10. Deccan Herald reported on November 15, 2019 that Kerala Govt may not allow women in Sabarimala Temple. Kerala Devaswom Minister Kadakampally Surendran also said that police protection would not be given to any women to visit the hill shrine unless they

produce any court order in their favour. 'Sabarimala would not be made a venue for showing activism', the Minister is reported to have said.

A true copy of the report dated 15.11.2019 in the Deccan Herald titled "Kerala Govt may not allow women in Sabarimala Temple" is annexed herewith and marked as **ANNEXURE-P/5 (Page No._____)**.

11. The Hindu dt.18.11.2019 reported the State Law Minister's statement "The 2018 Supreme Court order has been stayed in effect even though it was not officially mentioned."

A true copy of the Hindu report dated 18.11.2019 titled "There is de facto stay on Sabarimala verdict: Minister" is annexed herewith and marked as **ANNEXURE-P/6 (Page No._____)**.

12. According to reports, the Kerala Government had instructed the police to not permit women between the ages of 10-50 to the hill shrine, in defiance of the 2018 Supreme Court Order, reported the News Minute dated November 18, 2019

A true copy of the News Minute report dated 18.11.2019 titled "Kerala cops check age of women, block women below 50 from Sabarimala" is annexed herewith and marked as **ANNEXURE-P/7 (Page No._____)**.

13. A PTI story that appeared in the Hindu dated November 19, 2019 reported that "While two women in the barred age group of 10-50 years had been stopped by police on Monday from visiting the hill shrine, on Saturday, when the temple opened, at least 10 young women from

Andhra Pradesh had been sent back.”

A true copy of the Hindu report dated 19.11.2019 titled “12-year-old barred from proceeding to Sabarimala temple” is annexed herewith and marked as **ANNEXURE-P/8 (Page No._____)**.

14. It is submitted with respect that a party to the case before this Hon’ble Court, herein this case, the State of Kerala, cannot choose to ignore the Orders of this Hon’ble Court by giving its own interpretation. The stand of the State Government in public is a gross disregard to the Orders of this Hon’ble Court as well as violation of its solemn duty to uphold the Constitution and the laws as declared by the highest Court of the land. It is submitted that the State Government which is duty bound to act in aid of this Hon’ble Court under Article 144 of the Constitution of India, has expressed its intention to nullify the effect of the Orders of this Hon’ble Court. The stand of the State Government as it appeared in various news papers acted as an encouragement on the ground to various people and organizations opposing women entry. The State of Kerala also indulged in various direct and indirect means such as counselling by State Police officials to any woman aged between 10-50 to not visit Sabarimala, age verification of women, total non-co-operation by Police when there is opposition on the ground etc.

15. Hon’ble Mr.Justice Rohinton Nariman for himself and Hon’ble Dr.Justice Dhananjaya Chandrachud recorded in the judgment dated 14.11.2019 as follows:

“Today, it is no longer open to any person or authority to openly flout a

Supreme Court judgment or order, given the constitutional scheme as stated by us hereinabove. It is necessary for us to restate these constitutional fundamentals in the light of the sad spectacle of unarmed women between the ages of 10 and 50 being thwarted in the exercise of their fundamental right of worship at the Sabarimala temple. Let it be said that whoever does not act in aid of our judgment, does so at his peril – so far as Ministers, both Central and State, and MPs and MLAs are concerned, they would violate their constitutional oath to uphold, preserve, and defend the Constitution of India. So far as the citizens of India are concerned, we would do well to remind them of the fundamental duties of citizens laid down in Article 51A of the Constitution, in particular, clauses (a), (e), and (h) thereof....”

It is submitted with great respect that there is no difference of opinion on this part of the judgment by the three Hon'ble Judges who directed certain questions of law to be decided by a larger Bench. The above observations of Hon'ble Mr.Justice R.F.Nariman for himself and Dr.Justice D.Y.Chandrachud is not a dissent.

It was further observed by the Hon'ble Court that

“Compliance is not a matter of option. If it were to be so, the authority of the court could be diluted at the option of those who are bound to comply with its verdicts.”

66. The State of Kerala is directed to give wide publicity to this judgment through the medium of television, newspapers, etc. The government should take steps to secure the confidence of the

community in order to ensure the fulfillment of constitutional values. The State government may have broad-based consultations with representatives of all affected interests so that the modalities devised for implementing the judgment of the Court meet the genuine concerns of all segments of the community. Organised acts of resistance to thwart the implementation of this judgment must be put down firmly. Yet in devising modalities for compliance, a solution which provides lasting peace, while at the same time reaffirming human dignity as a fundamental constitutional value, should be adopted. Consistent with the duties inhering in it, we expect the State government to ensure that the rule of law is preserved."

As submitted earlier, the majority of Hon'ble Judges have not dissented to any of those directions and hence it is binding. These directions cannot therefore be ignored by the State Government. All the action of the State Government and various authorities under the State Government, after the Order dated 14.11.2019 of this Hon'ble Court, were in total disregard to the directions of this Hon'ble Court.

16. It is submitted with respect that even as a matter of practice, this Hon'ble Court relies on the judgments of this Hon'ble Court whether the same judgment is referred to a larger Bench or not. This Hon'ble Court is well aware of the practice followed by various Benches, however as a matter of illustration, one such instance is given below for the ready reference of this Hon'ble Court.

In 1978, a Bench of Seven Hon'ble Judges of this Hon'ble Court was pleased to hold in ***Bangalore Water Supply and Swereage Board v. A.Rajappa (1978) 2 SCC 213***, inter alia, that hospital is an industry u/s.2(j) of the Industrial Disputes Act, 1947.

A Bench of Seven Hon'ble Judge's Bench of this Hon'ble Court in ***State of U.P. v. Jai Bhir Singh (2005) 5 SCC 1*** expressed doubts regarding the correctness of the said judgment and referred the Bangalore Water Supply case to a larger Bench.

Again when the said case came up before a Bench of Seven Hon'ble Judge's Bench of this Hon'ble Court, the Bench of Seven Hon'ble Judge's Bench in ***State of U.P. v. Jai Bir Singh (2017) 3 SCC 311*** expressed serious doubts regarding the correctness of the judgment in Bangalore Water Supply case and directed it to be placed before a Bench of Nine Hon'ble Judges.

In between when another case came up before this Hon'ble Court in ***All India Institute of Medical Sciences v. Raj Singh (2017) 12 SCC 703***, a Division Bench of this Hon'ble Court was pleased to correctly apply the ratio of the binding judgment of this Hon'ble Court in ***Bangalore Water Supply and Swereage Board v. A.Rajappa (1978) 2 SCC 213***.

It is submitted with respect that mere reference does not make any change in the position of law, with regard to the binding nature of the judgments of this Hon'ble Court, even among its Benches.

A civil or judicial authority which is bound by the mandate of Article 144

of the Constitution of India, to act in aid of this Hon'ble Court, has no option to disobey the binding judgments/orders of this Hon'ble Court. Any such attempt would amount to contempt of Court.

17. The security was provided to the Applicant as per the Order dated 18.01.2019 passed by this Hon'ble Court in Writ Petition (C) No. 66/2019. On 16.08.2019, the Applicant herself requested the Police Chief to avoid her security and instead deploy those forces for helping those affected in the flood. DGP accepted the said request and withdrew security with effect 05.09.2019. Applicant received a letter from the office of SP mentioning therein that she will be afforded security if she requests in advance.

18. The Applicant decided to visit Sabarimala shrine again on 26.11.2019 along with some other devotees coming from Maharashtra. Applicant reached Kochi International airport on 26.11.2019 morning to receive Trupti Desai, Saraswati Maharaj popularly known as Lady Shankaracharya and her disciples who reached there by morning flight at around 4.30 am., to go together to Sabarimala on that day.

19. Staff of a television channel, Janam TV was waiting there at airport and started creating ruckus. Though a Uber taxi was booked and the driver came with the cab, he had to return as he was cautioned not to proceed with the women to Pampa (near to Sabarimala) and was forced to cancel the trip.

20. Thereafter all of them proceeded to airport police station to make a complaint and awaited there. Though a taxi was booked, the

drivers refused to travel upto Pampa.

21. Thereafter, the Applicant alongwith Trupti Desai and others proceeded to Police Commissioner's office, Ernakulam and reached there at around 6 am. Though two taxis were booked for traveling upto Nilakkal, by seeing the identity of the women in the age group of 10 to 50, the drivers refused to travel to Nilakkal.

22. The Applicant, Trupti Desai and others went upto the Commissioner office at 11th floor and requested for protection to go to Sabarimala. They refused to offer any protection and told the women to contact higher officers.

23. The Applicant tried to contact ADGP Manoj Abraham over telephone. He informed her that he is not in charge of Ernakulam and advised her to contact Officers in charge of Ernakulam district. Since the Commissioner could not be contacted over telephone, The Applicant went down to collect the Orders of this Hon'ble Court ordering her round the clock security as well as the Order of this Hon'ble Court dated 13.11.2018 in R.P.(C) No.3358 of 2018 in W.P.(C) No.373 of 2006 to show to the police officials there.

24. There were more than ten people at that spot. At that time, one person attacked the Applicant, whose name was later came to be known as Sreenath Viswanathan.

25. Some chemical substances having burning sensation over the body was sprayed at her face. Though the police were onlookers, they

did not detain the person who attacked the Applicant. Even after the Applicant pointing out the person who attacked her, he was not detained. The Applicant repeatedly requested the police to take her to nearby hospital and to arrest the attacker. However, the police took her to Ernakulam General hospital only after 15 minutes. Sreenath Viswanathan was arrested thereafter.

A true copy of the Hindu report dated 26.11.2019 titled “‘Pepper spray’ attack on woman as Trupti Desai arrives in Kochi for Sabarimala pilgrimage” is annexed herewith and marked as **ANNEXURE-P/9 (Page No._____)**.

26. The Applicant started experiencing the effect of burning sensation of the chemical attack. In the hospital, duty doctors, ophthalmologist, skin specialists and general practitioners came to treat her. Since she was not able to get rid of the burning sensation, she had to go back to the Commissioner Office to change the dress from her bag and thereafter returned to the hospital. Doctors gave her some ointment and medicine and was kept there at hospital till 9.30 am. Doctors discharged from the hospital at around 9.30 am.

27. However, the Police was not allowing her to come out of the hospital. Though her lawyer, Adv.Nimmi Johnson went to the hospital to meet her, she was also not allowed initially and the Sub Inspector told her that Bindu doesn't need any legal assistance as of now. Adv.Nimmi Johnson was allowed inside only at around 1 pm and after meeting Bindu came out after making sure of her health conditions.

28. Thereafter, as per the request of the Applicant, Adv.Nimmi Johnson was allowed inside the hospital at around 6.30 pm and was given a written application to be given to Commissioner of Police, Ernakulam. It contained a request for releasing her from hospital and to resume her police protection. It was further requested that she may be permitted to go to Sabarimala.

29. Adv.Nimmi Johnson went to the Commissioner of Police, Ernakulam and submitted the complaint regarding her illegal detention by police in the hospital and requested for protection to proceed to Sabarimala.

30. Police declined to give any protection and told the lawyer to approach the High Court to get a separate order. Though the certified copy of the Order dt.18.01.2019 in W.P.(C) No.66 of 2019 was shown, the Police refused to give her any protection.

The Applicant was kept in virtual detention in the hospital from morning till evening 6.45 pm.

31. The Applicant states that the State Government, its Chief Secretary and Director General of Police and various Police officials are all in gross contempt of the Orders of this Hon'ble Court as they acted against the mandate of Article 144 of the Constitution of India and intentionally disobeyed the Order dated 13.11.2018 In Review Petition (Civil) No. 3358/2018 In Writ Petition (Civil) No. 373/2006 and Judgment and Order Dated 28.09.2018 In Writ Petition (Civil) No. 373/2006.

32. Public declaration by various authorities within the State of Kerala is in gross disregard to the directions issued by this Hon'ble Court. The stand of the State Government that if any woman aged between 10-50, want to visit Sabarimala, they must come with an Order from this Hon'ble Court is in gross contempt of the Orders already passed by this Hon'ble Court.

33. The stand of the State Government has given a free hand to unlawful elements to intimidate any women aged between 10-50 from visiting Sabarimala. Absence of any help from Police has created an atmosphere of terror to any woman who is in the age group between 10-50 or any woman resembling that age group from violent physical, psychological threats. It is submitted with respect that if not sternly dealt with, this will be a threat to the Rule of law and to the final authority of this Hon'ble Court. It is most respectfully prayed that this Hon'ble Court may take cognizance of the stand taken by the State of Kerala and issue appropriate directions or initiate appropriate proceedings as this Hon'ble Court deem fit. It is prayed as such.

PRAYER

It the above circumstances it is therefore most respectfully prayed that his Hon'ble Court may graciously be pleased to:

(a) Direct the State of Kerala to ensure safe passage to any women to the Sabarimala temple, regardless of age or religion without let or hindrance from any source including the State and its agencies; and

(b) Direct the State of Kerala to respect, fulfil and protect the rights of all women regardless of age to enter the Sabarimala temple without hindrance in any manner whatsoever and in particular by preventing the unruly mobs or individuals from obstructing them from entering the temple.

(c) Direct the State of Kerala to give wide publicity to the judgment of this Hon'ble Court dated 28.09.2018 In Writ Petition (Civil) No.373/2006 through the medium of television, newspapers, etc both local and national; and

(d) direct immediate cessation of age verification and counselling done by the Police officials at the behest of State of Kerala discouraging women of menstruating age from visiting Sabarimala; and

(e) initiate appropriate proceedings against any State officials or private individuals who act in defiance of the Orders of this Hon'ble Court; and

(f) Pass such other order or orders as this Hon'ble Court would deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE APPLICANT/PETITIONER SHALL AS IS DUTY BOUND SHALL EVEN PRAY.

Place: New Delhi

Drawn by: Prasanth.P., Adv

Settled by: **Ms.Indira Jaising,**
Senior Advocate

FILED BY

Filed on:02.12.2019

(PRASANTH.P)
Advocate for the Applicant