

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Writ Petition No. 3472/2022

Haider Khan

-----Petitioner

Versus

1. Union Of India, Through Principal Secretary, Ministry Of Home Affairs, Government Of India, Cabinet Secretariat, Raisina Hill, New Delhi.
2. Registrar General And Census Commissioner Of India, Having Its Office At Nocc 2Nd Building, Jai Singh Road, New Delhi.
3. Director, Directorate Of Census Operations, Rajasthan, Ministry Of Home Affairs, Government Of India, 6-B Jhalana Doongri, Jaipur.

-----Respondents

For Petitioner(s)	:	Mr. Manas Ranchhor Khatri
For Respondent(s)	:	--

**HON'BLE MR. JUSTICE SANDEEP MEHTA
HON'BLE MR. JUSTICE VINOD KUMAR BHARWANI**

J U D G M E N T

Judgment pronounced on ::: **19/04/2022**

Judgment reserved on ::: **16/03/2022**

BY THE COURT : (PER HON'BLE MEHTA, J.)

(REPORTABLE)

The petitioner has filed the instant writ petition branding it to be a public interest litigation with the following prayers:-

"It is, therefore, most respectfully prayed on behalf of petitioner in the public interest that the writ petition may kindly be allowed in toto and following relief that serves the public interest may kindly be granted:-

- I. By an appropriate writ, order or direction, the sentence, "wherever it may consider it necessary or desirable to do so" in the Section 3 of the Census Act, 1948, may kindly be declared as ultra vires which de hors the provisions of the Constitution and be struck down.
- II. By an appropriate writ, order or direction, suitable direction be issued to the respondents to declare its intention in continuation of the notification published in official gazette on 28.03.2019 to conduct decennial Census 2021 by way of publication in the official gazette.
- III. By appropriate writ, order or direction, the Government of India may kindly be directed to conduct the Census in scheduled timeline forthwith immediately, without any further delay, not to cause further and continuous violation of the fundamental rights enshrined under Article 14 and 21 of the Constitution of India i.e., the right of a citizen to receive plan and policies of the Government in various sectors and departments of the Government, on the basis of the sound, accurate and reliable data collected under the procedure established by law, as per the provisions of the Census Act, 1948 and rules thereunder.
- IV. Any other order which the Hon'ble Court deems fit may kindly be passed in favour of the petitioner."

Shri Manas Ranchhor Khatri, counsel representing the petitioner vehemently and fervently contended that the Section 3 of the Census Act, 1948 (hereinafter referred to as 'the Act of 1948') which reads as below is ultra vires and de hors the Constitution of India and hence the same deserves to be struck down:-

"The Central Government may, by notification in the Official Gazette, declare its intention of taking a Census in the whole or any part of the territories to which this Act extends,

whenever it may consider it necessary or desirable so to do and thereupon the Census shall be taken.”

Shri Khatri urged that since Section 3 of the Act gives an absolute latitude to the Central Government of taking census whenever it considers necessary or desirable to do, it is ultra vires of the Constitution of India because the census operations must be undertaken on a fixed periodical basis i.e., every ten years. The last census operation was carried out in the year 2011. Thereafter, the Central Government has declared its intention to conduct a fresh census during the year 2021 by way of the Notification published in the Official Gazette on 28.03.2019 but till date, no action is forthcoming on part of the respondents to complete the process. The concerned authorities cannot sit tight over the notification and speedy action has to be taken for completing the process which was scheduled to be carried out between 01.04.2020 to 30.09.2020.

Shri Khatri thus, urged that a mandamus be issued to the respondents to complete the process of census within the stipulated time and to strike down the following words appearing in Section 3 of the Census Act **"Whenever it may consider it necessary or desirable so to do"** which give an unbridled discretion to the Central Government to delay the process of taking the census. He drew the Court's attention to certain newspaper reports and urged that impact of delay in conducting census is very harmful to the progress and development of the nation. He also referred to the proceedings of Lok Sabha wherein,

a question was posed regarding the progress of census operation and a reply was given on behalf of the Ministry that field activities have been postponed until further orders and the Government has not taken any decision to prepare 'National Register of Indian Citizens at the National Level'. Shri Khatri thus, urged that it is a fit case warranting exercise of the writ jurisdiction of this Court in public interest so as to direct the respondents to complete the process of census strictly in terms of the Notification (Annexure-4).

We have given our thoughtful consideration to the submissions advanced at bar and have gone through the material available on record.

Ex-facie, we are of the view that objective of the petitioner by filing this writ petition is malafide on the face of it. The petitioner has not placed on record, any material to satisfy the Court as to the sequence when earlier census operations were undertaken. Placing reliance on newspaper reports to persuade the Court regarding the adverse impacts of non-holding of the census cannot satisfy the requirement of proper research and collection of data which is absolutely essential before presenting any writ petition branding it to be public interest litigation. The fervent contention of Shri Khatri that as Section 3 of the Act gives an unfettered discretion to the Central Government to take a census "whenever it may consider it necessary or desirable so to do" and hence, it should be declared to be ultra vires, absolutely fanciful and unrealistic. India is a country of burgeoning

population nearing 1.5 billion and as such, conducting the gargantuan exercise of census requires immense preparation, mammoth efforts, large scale involvement of Human resources in addition to being a very expensive operation. In the intervening period after the Notification (Annexure-4) came to be issued, the country has been struck by repeated waves of highly dangerous Covid pandemic and thus, no reasonable person could expect that such a massive operation of taking census could be undertaken during the period when the country was facing strict lockdowns, immense loss of lives and the Government was engaged in ensuring that minimum damage is caused to the public at large owing to the pandemic. Going ahead with the census operation during this period would result into compromising the safety of all stakeholders. The petitioner has failed to satisfy the Court as to what prejudice would be caused to the public at large by non-completion of the census operations in the face of these tremendous challenges, which the country is facing. Precisely this was the answer given by the Hon'ble Minister of State Home Affairs to the question when Lok Sabha was convened on 27.07.2021. The reasons so assigned are absolutely valid. The census activities are to be undertaken in accordance with the Census Act and it is a sovereign function of the Central Government and there is no reason to question the bonafides of the executing authorities in this regard. The petitioner has tried to misuse the process of law by trying to persuade this Court to issue a writ to the Central Government for carrying out census in a specified manner and time-frame without there being any material to show that this process is being intentionally delayed.

It may be mentioned here that in this period of almost two years, the world at large has been ravaged by the Covid pandemic. Hon'ble the Supreme Court took suo moto cognizance of the situation in the case of **In Re : Contagion of Covid-19 Virus in Prisons (Writ (Civil) Petition No.01/2020)** and has extended the statutory limitations to almost two years. Thus, the attempt of the petitioner to seek a direction to the Central Government to conduct the census activities in a specified time-frame cannot be considered to be bonafide by any stretch of imagination.

As a consequence, we find no merit in this writ petition which is dismissed. Cost of Rs.25,000/- (twenty five thousand rupees) is imposed upon the petitioner which shall be deposited with the Registrar (Judicial), Rajasthan High Court, Jodhpur within next thirty days, and shall be appropriated in the funds of the Rajasthan State Legal Services Authority, Jodhpur. In case, the petitioner fails to deposit the cost with the Registrar (Judicial), Rajasthan High Court, Jodhpur, as directed above, intimation in this regard shall be forwarded to the District Collector, Jaisalmer for ensuring realization of cost.

List on 27.05.2022 for receiving the compliance report.

(VINOD KUMAR BHARWANI),J

(SANDEEP MEHTA),J

Sudhir Asopa/-