

IN THE HIGH COURT OF JUDICATURE FOR MADHYA PRADESH AT
JABALPUR
BEFORE
HON'BLE SHRI JUSTICE SHEEL NAGU
&
HON'BLE SHRI JUSTICE PURUSHAINDRA KUMAR KAURAV
W.P. No.24323 of 2019 (PIL)

Between:-

GREESHM JAIN S/O S.K. JAIN, AGED ABOUT
49 YEARS, OCCUPATION: ADVOCATE, 114
MOHIT CHAMBERS WRIGHT TOWN
JABALPUR, (MADHYA PRADESH).

....PETITIONER

(BY SHRI SATISH VERMA, ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH
THROUGH CHIEF SECRETARY VALLABH
BHAWAN, BHOPAL (MADHYA PRADESH)
2. PRINCIPAL SECRETARY, (LOCAL SELF
GOVT.) DEPT. OF URBAN ADMINISTRATION
AND DEVELOPMENT, VALLABH BHAWAN,
BHOPAL (MADHYA PRADESH)
3. THE COLLECTOR /DISTRICT MAGISTRATE,
BHOPAL DISTT. BHOPAL (MADHYA
PRADESH).
4. SUPERINTENDENT OF POLICE, BHOPAL
DISTT. BHOPAL (MADHYA PRADESH)
5. THE MUNICIPAL COMMISSIONER,
MUNICIPAL CORPORATION, BHOPAL CITY
BHOPAL (MADHYA PRADESH).

....RESPONDENTS

*(SHRI A. RAJESHWAR RAO, GOVERNMENT ADVOCATE FOR
RESPONDENTS NO.1 TO4.*

SHRI ANSHUMAN SINGH, ADVOCATE FOR RESPONDENT NO.5)

Reserved on : 14.12.2021

Passed on : 03.03.2022

Per : Sheel Nagu, J.:

ORDER

This petition under Article 226 of Constitution has been filed in shape of Public Interest Litigation by a Practising Lawyer raising the alleged public cause against erection of 10 feet tall statue of Late Shri Arjun Singh, former Chief Minister of the State of Madhya Pradesh, at Major Nanke Petrol Pump Tri-junction (Link Road No.1 T.T. Nagar, Bhopal).

2. It is submitted by learned counsel for petitioner, Shri Satish Verma that besides the aforesaid statue being an obstruction to free-flow of traffic, its erection is in violation of decision of Apex Court passed on 18.01.2013 in SLP (C) 8519/2006 (Union of India Vs. State of Gujrat and others), wherein the Apex Court by an interim order directed thus:-

“4. Until further orders, we direct that the status quo, as obtaining today, shall be maintained in all respects by all concerned with regard to the Triangle Island where statue of late Shri N. Sundaran Nadar has been permitted to be sanctioned. We further direct that henceforth, State Government shall not grant any permission for installation of any statue or construction of any structure in public roads, pavements, sideways and other public utility places. Obviously, this order shall not apply to installation of high mast lights, street lights or construction relating to electrification, traffic, toll or for development and beautification of the streets, highways, roads etc. and relating to public utility and facilities.

5. The above order shall also apply to all other states and union territories. The concerned Chief Secretary/Administrator shall ensure compliance of the above order.”

2.1 On the basis of the aforesaid public cause, prayer is sought for removal of said statue and for a generic direction to also remove all statues

and structures erected on or off the road which are causing traffic hazard anywhere in the entire state of M.P.

3. During pendency of this case, I.A. No.14713/2019 was filed for taking documents on record bringing to the notice of this Court that on 19.11.2019, statue of former Prime Minister, Late Mrs. Indira Gandhi has been installed by Municipal Corporation, Chhindwara at a place adjacent to the road reserved for public utility in the town of Chhindwara.

4. The respondents filed return on 20.01.2020 duly supported by an affidavit of one Saurabh Sood, Sub Engineer, Municipal Corporation, Bhopal stating thus:-

(i) This petition has been filed with the hidden agenda of gaining cheap publicity and thus, deserves to be dismissed with heavy cost.

(ii) Petitioner is a resident of Jabalpur and since he has not raised any public cause pertaining to Jabalpur city, he ought not to be heard qua a public cause concerning Bhopal city.

(iii) Earlier a statue of Chandra Shekhar Azad was installed at the spot in question (where statue in question has been installed), the same was removed to enable widening of the Tri-junction. Thereafter, statue of Late Shri Arjun Singh has been installed which does not obstruct free-flow of traffic vide photograph Annexure R/2.

(iv) Respondents have not received any complaint as regards obstruction caused by the statue in question in free-flow of traffic.

(v) Pursuant to a query made by Municipal Corporation, Bhopal vide Annexure R/4 dated 04.12.2019, the Additional Superintendent of Police, Traffic Bhopal vide letter dated 13.12.2019 (Annexure R/5) has opined that installation of statue in question does not obstruct free-flow of traffic.

4.1 Thereafter, respondents filed another reply on 06.08.2021 which was accompanied by letter dated 02.12.2019 of Municipal Corporation, Bhopal

informing the State counsel that in terms of the order of Apex Court in SLP (C) 8519/2006 (Union of India Vs. State of Gujrat and others), Municipal Corporation, Bhopal shall abide by the directives of Apex Court by indulging in guidelines and orders regarding erection of statue. The said reply is also accompanied by letter dated 12.07.2021 of Commissioner, Municipal Corporation, Bhopal asking the Police Department to again submit report in regard to present state of free-flow of traffic. In response, Superintendent of Police (South) by letter dated 15.07.2021 informed that due to increase in the flow of traffic at the said tri-junction, erection of statue would cause obstruction to free-flow of traffic.

5. From the aforesaid conflicting responses made by respondents at different points of time for reasons best known to them, it is obvious that the functionaries of the State are not acting in accordance with law, but are acting to serve an ulterior motive. The functionaries of the State including the Municipal Corporation which is an instrumentality of the State is obliged to act in accordance with the constitutional provisions and that of M.P. Municipal Corporation Act 1956. The decisions or recommendations of functionaries of the State including Municipal Corporation, Bhopal should sub-serve the law and not any personal or political interest.

6. The present case is a burning example of shifting stands taken by respondents and also the Municipal Corporation. It is further unfortunate to note that a cause raised by a Practising Lawyer which appears to be a genuine public cause, has been categorized as motivated and serving some oblique motive. It is not necessary for the functionaries of the State to oppose every petition that is filed against them. The State has to act in a fair manner. If a genuine public cause is raised by a person coming to the Court, the State and its functionaries should be the first to accept their mistakes and take corrective steps in furtherance of its ultimate object of serving the public at large in accordance with law. In fact, petitioner herein is raising a cause arising out of unlawful action of the State and its instrumentality. The

State and its instrumentality should not treat such genuine PILs as adversarial litigation.

7. It is obvious from the photographs/maps on record that the triangle at the tri-junction, where the statue in question is installed, is not meant for installation of statue. Moreso, for safe and secure movement of traffic and pedestrians, the triangles/circulatory at a tri-junction ought to be kept vacant and unobstructed to avoid the dangers of accidents caused by obstruction (because of the statue) of field of vision of pedestrians and drivers.

8. This Court thus has no manner of doubt that statue of Late Shri Arjun Singh, the former Chief Minister of the State has been established in gross violation of decision of Apex Court passed on 18.01.2013 in SLP (C) 8519/2006 (Union of India VS. State of Gujrat and others), and therefore, deserves to be immediately removed.

9. The interim order dated 18.01.2013 as aforesaid passed by the Apex Court was continued which is evident from the subsequent interim order passed on 31.01.2018 in SLP (Civil) No.8519/2006, the extract of which is reproduced hereinbelow:

“UPON hearing the counsel the Court made the following

O R D E R

*SLP (C) NOS. 8519/2006, W.P.(C)NO. 314/2010, CONTEMPT
PETITION(C)NO. 397/2013 IN SLP(C)NO.8519/2006, CONTEMPT
PETITION(C)D.34470/2013 IN SLP(C)NO.8519/2006, CONTEMPT
PETITION(C)NO.549/2014 in SLP(C)NO.8519/2006, CONTEMPT
PETITION DY. NO.40673/2017:*

Repeated orders have been passed by this Court with respect to the removal of illegal religious structures which have come up by way of encroachments on public land. Now these matters are pending.

Vide orders dated 7.12.2009, the following directions have been issued:

“This Court on 29th September, 2009, after taking into consideration the letter dated 19th September, 2009, sent by the Union Home Secretary to the learned Solicitor General of India, we passed the following order:

"We have heard the learned counsel for the parties. Looking to the far reaching implications and consequences of the orders of this Court, on the oral request of the learned Solicitor General of India, we deem it appropriate to implead all the States and the Union Territories as respondents to this petition. The Registry is directed to issue notices to all the States and the Union Territories within three days. The Union of India is directed to supply the entire set of papers to all the Standing Counsel appearing for the State Governments and the Union Territories.

The States and the Union Territories may file replies within four weeks and the Union of India is granted liberty to file rejoinder within two weeks thereafter.

As an interim measure, we direct that henceforth no unauthorized construction shall be carried out or permitted in the name of Temple, Church, Mosque or Gurudwara etc. on public streets, public parks or other public places etc.

In respect of the unauthorized construction of religious nature which has already taken place, the State Governments and the Union Territories shall review the same on case to case basis and take appropriate steps as expeditiously as possible.

In order to ensure compliance of our directions, we direct all the District Collectors and Magistrates/Deputy Commissioners in charge of the Districts to ensure that there is total compliance of the order passed by us. They are directed to submit a report within four weeks to the concerned Chief Secretaries or the Administrators of the Union Territories who in turn will send a report to this Court within eight weeks from today.

List this matter for further directions on 7th December, 2009."

All the States and the Union Territories have been served. Despite service, most of the States and Union Territories have not filed affidavits as directed by this Court. In the interest of justice, we grant one more opportunity to the Chief Secretaries/Administrators of the respective States and Union Territories to file affidavits. Let the same be filed within six weeks,

failing which the concerned Chief Secretaries and Administrators shall remain present in Court on the next date of hearing.

In case the Chief Secretaries and the Administrators have not issued circulars to all the Collectors and the District Magistrates of the Districts, it shall be issued within two weeks from today.

The Chief Secretaries, in consultation with the respective Governments are directed to frame the policy in respect of existing unauthorised construction of religious nature, which had already taken place. This Court directed the respondents to review the same on case to case basis. Let the policies be formulated by all the States and the Union Territories within four weeks from today.

We are reiterating that the Chief Secretaries, the concerned District Magistrates and the Collectors/Deputy Commissioners incharge of the Districts must ensure total compliance of our order. Any breach in this respect shall be viewed seriously by this Court.

We direct the Chief Secretaries/ Administrators of all the States and Union Territories to circulate copies of the order dated 29th September, 2009 and this order to all the District Magistrates and Collectors/Deputy Commissioners, other public bodies and local bodies.

We direct the learned Standing counsel appearing for various States and the Union Territories to ensure that all copies of the affidavits are filed in this Court on or before 27th January, 2010 with an advance copy to the learned Solicitor General of India, who is requested to get all these affidavits tabulated and submit a report to this Court on or before 2nd February, 2010.

Place this petition for further directions on 4th February, 2010. Looking to the gravity of this matter, we direct that no order or direction inconsistent to our orders, shall be passed by any other Court in the country.”

Thereafter, vide order dated 16.2.2010, the Apex Court issued following directions:

In pursuance of the order of this Court dated 29th September, 2009, by which this Court directed that henceforth no unauthorized construction shall be carried out or permitted in the name of Temple, Church, Mosque or Gurudwara etc. on public streets, public parks or other public places, the affidavits of all the

States and the Union Territories, except the State of Uttarakhand, have been filed. All the States and the Union Territories have taken necessary steps to ensure that no further unauthorized construction shall take place and Court's directions are seriously and meticulously complied with.

The other part of the directions issued on 29th September, 2009, were that in respect of unauthorized construction of religious nature which has already taken place on public streets, public parks or other public places, the State Governments and the Union Territories were directed to review the same on case to case basis and take appropriate steps as expeditiously as possible. We do not find comprehensive and satisfactory affidavits as far as this direction of the order is concerned. Therefore, it has become imperative to direct all the States and the Union Territories to formulate comprehensive policy regarding the removal/relocation/regularisation of the unauthorized construction within six weeks' from today. The policy should clearly indicate within what period the States and the Union Territories are going to fully comply with its policy to remove/relocate/regularise the unauthorized construction.

We also direct all the States and the Union Territories to identify unauthorized construction of religious nature on public streets, public parks and public places within six weeks' from today.

We direct the Chief Secretary of the State of Uttarakhand to file an affidavit within two weeks from today. In case the affidavit is not filed, the Chief Secretary shall remain present in Court on the next date of hearing.

We also direct all the Chief Secretaries of the States and the Administrators of the Union Territories to file further comprehensive affidavits within six weeks' from today.

The special leave petition is adjourned to 6th April, 2010."

To ensure the implementation of directions issued by this Court, consensus has been arrived at Bar and in our opinion, rightly, that the implementation of the order should be supervised by the concerned High Courts. We, consequently, remit the above matters to the respective High Courts for ensuring implementation of the orders in effective manner.

The concerned records be transmitted to the respective High Courts. The interim orders wherever passed, shall continue, until the matters are

considered by the High Court. In case any clarification is required, it would be open to the parties to approach this Court.

The High Court will have the jurisdiction to proceed in the Contempt of any of the orders passed by this Court.

Pending applications shall also be transmitted to the High Court.”

[Emphasis Supplied]

10. Perusal of Writ Petition No.18051/2018 (PIL) registered after receipt of record from the Apex Court reveals that the said PIL continues to be pending in this Court till date. Though the said Writ Petition No.18051/2018 (PIL) relates to religious constructions made on government/public land reserved for public use, but the interim restraint orders passed by the Apex Court in respect of statues also continue to hold good till date. Thus, the interim restraint against erection of statues at spaces reserved for public utility, imposed by the Apex Court continues to bind all State Government, instrumentalities of the State, local bodies etc.

11. Before parting, this Court deems it apt to highlight the shifting stands taken by the functionaries of the State and the respondent/Corporation. After the respondent/Corporation entered appearance in December, 2019, return was filed on 20.01.2020 objecting to the petition thus:-

- (a) Petitioner has a hidden agenda.
- (b) By way of this writ petition, petitioner is indulging in cheap publicity.
- (c) Despite belonging to Jabalpur and not having raised any public cause qua Jabalpur area, the petitioner cannot be heard for a public cause qua Bhopal area.
- (d) The statue of Chandra Shekhar Azad was rightly removed from the same spot, but installation of statue of late Shri Arjun Singh near the same spot does not obstruct free flow of traffic.
- (e) Not even a single member of general public has lodged any complaint.

(f) Vide letter dated 13.12.2019 of Additional Superintendent of Police (Traffic), Bhopal informed that installation of statue in question does not obstruct free flow of traffic.

11.1 Thereafter within 6-7 months, the mind and opinion of the State functionaries took a U-turn which is revealed by I.A. No.7453/2021 filed by respondent/Corporation, accompanied by letter dated 15.07.2021 of Superintendent of Police (South), Bhopal that due to rapid increase in flow of traffic, the statue would be an obstruction in the free flow of traffic.

12. It is thus obvious that the sudden change of mindset was not motivated by the reason of increase in flow of traffic but by extraneous considerations. Be that as it may, the shifting stands taken by the functionaries of the State and the respondent/Corporation is to mislead this Court which belies the claim of the State and the Corporation to be dispassionate litigants.

12.1 The respondent/Corporation has left no stone unturned to malign the petitioner and belittling the genuine public cause raised herein.

12.2 The State and Corporation need to be reminded that they ought not to equate themselves as individual litigants in an adversarial litigation especially when defending a PIL. A genuine PIL is filed raising a particular public cause in regard to which the State or its instrumentalities are found wanting. Thus, petitioner herein is doing what the State ought to have done.

13. In the backdrop of aforesaid, the respondents deserve to be saddled with exemplary cost and this writ petition stands **allowed** in the following terms:-

(i) Writ of mandamus is issued directing the respondents including Municipal Corporation, Bhopal to forthwith remove the statue of Late Shri Arjun Singh, former Chief Minister of the State of Madhya Pradesh from Major Nanke Petrol Pump Tri-junction (Link Road No.1, T.T. Nagar, Bhopal) including platform.

(ii) Respondent No.1 is further directed by a writ of mandamus to remove all statues erected on public roads, pavements, sideways and any other public utility place at any village, town or city situated within the State of M.P., which had been erected on or after 18.01.2013 (the date of restraint order passed by the Apex Court in SLP (C) 8519/2006 (Union of India VS. State of Gujrat and others)).

(iii) Respondents are henceforth restrained by way of writ of prohibition from installing any statue on public roads, pavements, sideways and any other public utility place situated in any village, town or city within the State of M.P.

(iv) Since the petitioner has brought a genuine public cause before this Court, he is entitled to cost of this litigation while respondents who have acted unlawfully and in an irresponsible manner defying the restraint order of the Apex Court, the respondents are liable to be saddled with exemplary cost.

(v) Thus, cost of Rs.30,000/- is imposed on the respondents No.1 to 4 to be paid in equal proportion by each one of them, out of which Rs.10,000/- shall be paid to petitioner by depositing the same in the bank account of petitioner through digital transfer within a period of 30 days from today, while the remaining Rs.20,000/- shall be deposited with the High Court Legal Aid Committee, Jabalpur, for wasting the precious time of this Court in dealing with this avoidable piece of litigation.

(vi) The aforesaid cost be deposited within a period of 30 days from today, failing which the matter be listed under the caption of "Direction" as PUD for execution *qua* cost.

(SHEEL NAGU)
JUDGE

(PURUSHAINDR KUMAR KAURAV)
JUDGE