IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 438 of 2011-A
a/w CWP No. 4716 of 2011-E

Reserved on: 16.07.2012

Decided on: 30.08.2012

CWP No. 438 of 2011

1. Evangelical Fellowship of India, A Society registered under the Societies Registration Act, 1860, 805/92, Deepali Building, Nehru Place, New Delhi-110 019, through Rev. Richard Howell, General Secretary.

2. Act Now For Harmony And Democracy (ANHAD) a registered Trust having its office at 23, Canning Lane, New Delhi-110 001, through Shabnam Hashmi, Managing Trustee.

…Petitioners.

Versus

State of Himachal Pradesh through Principal Secretary, Home Department, Shimla, Himachal Pradesh.

…Respondent.

.....

CWP No. 4716 of 2011

Rev. Shamser Masih, son of Shri Jit Masih, earlier Presbyter-in-charge, Christ Church, The Ridge, Shimla, presently posted as Presbyter-in-charge, Church of St. John in wilderness, Palampur, District Kangra, H.P.

...Petitioner.

Versus

1. State of Himachal Pradesh, through Principal Secretary, Home Department, Shimla, H.P.

2. District Magistrate, District Shimla, Shimla, H.P.

3. Shri Samuel Prakash, s/o Man Singh, resident of Christ Church Annexe, Christ Church, The Ridge, Shimla, H.P. (deleted)

4. Mrs. Meenu Prakash, w/o Shri Samuel Prakash, resident of Christ Church Annexe, Christ Church, The Ridge, Shimla, H.P.

...Respondents.

Civil Writ Petitions under Article 226 of the Constitution of India.

Coram

The Hon'ble Mr. Justice Deepak Gupta, J.

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *Yes.*

---

[1] *Whether the reporters of local papers may be allowed to see the Judgment? Yes.*

High Court of HP

::: Downloaded on - 27/04/2024 17:39:07 :::CIS

CWP No. 438 of 2011

For the petitioners: Mr. Sudhir Nandarajog, Senior Advocate, with M/s R.R. David, P.K. Singh, Aman Sood, Tehmina Arora, Loreign Ovung, Febin Mathew Varghese and Dhiraj Philip, Advocates.

For the respondents: Mr. R.K. Bawa, Advocate General, with Mr. Vivek Singh Thakur, Additional Advocate General, for the respondent.

Dr. Subramanian Swamy with Mr. Ajay Pal Jagga and Ms. Madhu Sharma, Advocates, as intervener.

Mr. T.S. Chauhan, Advocate, for applicant-Mahant Ram Mohan Dass.

Mr. B.C. Negi and Mr. Rajesh Kumar, Advocates, for applicant-Sanatan Dharam Sabha.

Ms. Anu Tuli, Advocate, for applicant-Ramesh Chogar.

.....

CWP No. 4716 of 2011

For the petitioner: M/s Manoj V. George, B.D. Das, Alex Joseph and Aman Sood, Advocates.

For the respondents: Mr. R.K. Bawa, Advocate General, with Mr. Vivek Singh Thakur, Additional Advocate General, for respondents No. 1 and 2.

Mr. Dinesh Thakur, Advocate, for respondent No. 4.

Dr. Subramanian Swamy with Mr. Ajay Pal Jagga and Ms. Madhu Sharma, Advocates, as intervener.

Deepak Gupta, J.

CWP No. 438 of 2011

The petitioners, by means of this writ petition, have challenged the constitutional validity of the Himachal Pradesh Freedom of Religion Act, 2006 (hereinafter referred to as the Himachal Pradesh Act) and have prayed that the said Act, especially Sections 2 (a), 2 (b), 2 (c), 2 (d), 4, 8 of the Act and Rules 3, 4, 5 and 6 of the H.P.

::: Downloaded on - 27/04/2024 17:39:07 :::CIS

Freedom of Religion Rules framed under the Act are ultra vires the Constitution of India and violate the provisions of Articles 14, 19 (1), 21 and 25 of the Constitution of India.

2. We may point out that during the course of the hearing of the writ petitions, a large number of applications were filed by various individuals and bodies, such as, Dr. Subramanian Swamy, Mr. Vijay Kumar Sood, Shree Sanatan Dharam Sabha, Mr. Ajay Sood, Mahant Ram Mohan Dass, Shri Brahmin Sabha Shimla, Mr. Ramesh Chaujjar, Shri Ashutosh, etc. Therefore, on 30th April, 2012, we had permitted all these applicants to intervene, though they were not permitted to be arrayed as respondents. Dr. Subramanian Swamy, even at the time of final arguments, prayed that he may be arrayed as a party-respondent. We have permitted the applicants to assist the Court, but we do not feel that they are necessary parties to the petitions.

3. At the outset, we may state that a large number of issues raised in this petition stand decided and are no longer *res integra* in view of the decisions of the Apex Court rendered in **Rev. Stainislaus versus State of Madhya Pradesh and others, AIR 1977 Supreme Court 908** and **Satya Ranjan Majhi and another versus State of Orissa and others, (2003) 7 Supreme Court Cases 439.** In Stainislaus's case**,** the Apex Court upheld the provisions of the Madhya Pradesh Dharma Swatantraya Adhiniyam, 1968 and the Orissa Freedom of Religion Act, 1967. In Satya Ranjan Majhi's case, the Apex Court was dealing with a petition wherein the provisions of Sections 2 and 7 of the Orissa Freedom of Religion Act, 1967 and Rules 4 & 5 of the Orissa Freedom of Religion Rules, 1989, had been challenged.

High Court of H.P.

::: Downloaded on - 27/04/2024 17:39:07 :::CIS

4. In Stainislaus's case, the Apex Court dealing with Article 25 (1) of the Constitution of India and especially the word 'propagate' held as follows:

> "15. Article 25 (1) of the Constitution reads as follows :
>
> > "25 (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."
>
> 15-A. Counsel for the appellant has argued that the right to 'propagate' one's religion means the right to convert a person to one's own religion. On that basis, counsel has argued further that the right to convert a person to one's own religion is a fundamental right guaranteed by Article 25 (1) of the Constitution.
>
> 16. The expression 'propagate' has a number of meanings, including "to multiply specimens of (a plant, animal, disease etc.) by any process of natural reproduction from the parent stock", but that cannot, for obvious reasons, be the meaning for purposes of Article 25 (1) of the Constitution. The Article guarantees a right of freedom of religion, and the expression 'propagate' cannot therefore be said to have been used in a biological sense.
>
> 17. The expression 'propagate' has been defined in the Shorter Oxford Dictionary to mean "to spread from person to person, or from place to place, to disseminate, diffuse (a statement, belief, practise, etc.)".
>
> 18. According to the Century Dictionary (which is an Encyclopedic Lexicon of the English Language) Vol. VI, 'propagate' means as follows :-
>
> > "To transmit or spread from person to person or from place to place; carry forward or onward; diffuse; extend; as to propagate a report; to propagate the Christian religion."
>
> 19. We have no doubt that it is in this sense that the word 'propagate' has been used in Article 25 (1), for what the Article grants is not the right to convert another person to one's own religion, but to transmit or spread one's religion by an exposition of its tents. It has to be remembered that Article 25 (1) guarantees "freedom of conscience" to every citizen, and not merely to the followers of one particular religion, and that, in turn, postulates that there is no fundamental right to convert another person to one's own religion because if a person purposely undertakes the conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the "freedom of conscience" guaranteed to all the citizens of the country alike.

High Court of H.P.

::: Downloaded on - 27/04/2024 17:39:07 :::CIS

20. The meaning of guarantee under Article 25 of the Constitution came up for consideration in this Court in *Ratilal Panachand Gandhi v. The State of Bombay, (1954) SCR 1055 = (AIR 1954 SC 388)* and it was held as follows :-

> "Thus, subject to the restrictions which this Article imposes, every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others".

This Court has given the correct meaning of the Articles, and we find no justification for the view that it grants a fundamental right to convert persons to one's own religion. It has to be appreciated that the freedom of religion enshrined in the Article is not guaranteed in respect of one religion only, but covers all religions alike, and it can be properly enjoyed by a person if he exercises his right in a manner commensurate with the like freedom of persons following the other religions. What is freedom for one, is freedom for the other, in equal measure, and there can therefore, be no such thing as a fundamental right to convert any person to one's own religion.

21. It has next been argued by counsel that the Legislatures of Madhya Pradesh and Orissa States did not have legislative competence to pass the Madhya Pradesh Act and the Orissa Act respectively, because their laws regulate 'religion' and fall under the Residuary Entry 97, in List I of the Seventh Schedule to the Constitution.

22. It is not in controversy that the Madhya Pradesh Act provides for the prohibition of conversion from one religion to another by use of force or allurement, or by fraudulent means, and matters incidental thereto. The expressions "allurement" and "fraud" have been defined by the Act. Section 3 of the Act prohibits conversion by use of force or by allurement or by fraudulent means and Section 4 penalises such forcible conversion. Similarly, Section 3 of the Orissa Act prohibits forcible conversion by the use of force or by inducement or by any fraudulent means, and Section 4 penalises such forcible conversion. The Acts therefore, clearly provide for the maintenance of public order for, if forcible conversion had not been prohibited, that would have created public disorder in the States.

23. The expression "Public order" is of a wide connotation. It must have the connotation which it is meant to provide at the very first Entry in List II. It has been held by this Court in Ramesh Thapper v. The State of Madras, (1950) SCR 594 = (AIR 1950 SC 124) that "public order" is an expression of wide connotation and signifies state of tranquility which prevails among the members of a political society as a result of internal

::: Downloaded on - 27/04/2024 17:39:07 :::CIS

regulations enforced by the Government which they have established."

24. Reference may also be made to the decision in *Ramjilal Modi v. State of U. P., (1957) SCR 860 = (AIR 1957 SC 620)* where this Court has held that the right of freedom of religion guaranteed by Articles 25 and 26 of the Constitution is expressly made subject to public order, morality and health, and that

> "it cannot be predicated that freedom of religion can have no bearing whatever on the maintenance of public order or that a law creating an offence relating to religion cannot under any circumstances be said to have been enacted in the interests of public order."

It has been held that these two Articles in terms contemplate that restrictions may be imposed on the rights guaranteed by them in the interests of public order. Reference may as well be made to the decision in *Arun Ghosh v. State of West Bengal, AIR 1970 SC 1228 = (1970 Cri LJ 1136)* where it has been held that if a thing disturbs the current of the life of the community, and does not merely affect an individual, it would amount to disturbance of the public order. Thus, if an attempt is made to raise communal passions, e.g., on the ground that some one has been "forcibly" converted to another religion, it would, in all probability, give rise to an apprehension of a breach of the public order, affecting the community at large. The impugned Acts therefore fall within the purview of Entry 1 of List II of the Seventh Schedule as they are meant to avoid disturbances to the public order by prohibiting conversion from one religion to another in a manner reprehensible to the conscience of the community. The two Acts do not provide for the regulation of religion and we do not find any justification for the argument that they fall under Entry 97 of List I of the Seventh Schedule."

5. Dr. Subramanian Swamy has drawn our attention to the Collected Works of Mahatma Gandhi, wherein certain questions were posed by Mahatma Gandhi and answered by himself:

> ***"Would you prevent missionaries coming to India in order to baptize?***
>
> *Who am I to prevent them? If I had power and could legislate, I should certainly stop all proselytizing. It is the cause of much avoidable conflict between classes and unnecessary heart-burning among missionaries. But I should welcome people of any nationality if they came to serve here for the sake of service. In Hindu households the advent of a missionary has meant the disruption of the family coming in the wake of change of dress, manners, language, food and drink.*

::: Downloaded on - 27/04/2024 17:39:07 :::CIS

> ***Is it not the old conception you are referring to? No such thing is now associated with proselytization.***
>
> *The outward condition has perhaps changed but the inward mostly remains Vilification of Hindu religion, though subdued, is there. If there was a radical change in the missionaries' outlook, would Murdoch books be allowed to be sold in mission depots? Are those books prohibited by missionary societies? There is nothing but vilification of Hinduism in those books. You talk of the conception being no longer there. Only the other day a missionary descended on a famine area with money in his pocket, distributed it among the famine-stricken, converted them to his fold, took charge of their temple and demolished it. This is outrageous. The temple could not belong to the converted Hindus, and it could not belong to the Christian missionary. But this friend goes and gets it demolished at the hands of the very men who only a little while ago believed that God was there."*

6. He has also drawn our attention to the issue raised in the Constituent Assembly that conversion from one religion to another brought about by coercion or undue influence shall not be recognized by law. The question was answered by the Hon'ble Sardar Vallabhbhai J. Patel in the following terms:

> *"The Committee discussed this and there were several other suggestions made by the House and the clause was referred back to the Committee. After further consideration of this clause, which enunciates an obvious principle, the Committee came to the conclusion that it is not necessary to include this as a fundamental right. It is illegal under the present law and it can be illegal at any time."*

7. Relying upon the aforesaid observations, Dr. Subramanian Swami contends that conversions are against Hindu philosophy and, therefore, should not be permitted. We are of the considered view that the issues raised by Dr. Subramanian Swamy are more philosophical in nature. The question whether conversions should be permitted or not is not for the Court to decide. We have to decide the present cases on the basis of the legal submissions. Conversions in our country are permissible if the conversion is by the

::: Downloaded on - 27/04/2024 17:39:07 :::CIS

free will of the convertee. We are also of the opinion that each and every citizen of this country has a right not only to follow his own beliefs but also has a right to change his beliefs.

8. A comparative analysis of the Himachal Pradesh Act, the Madhya Pradesh Act and the Orissa Act shows that the definitions of the words “conversion”, “force”, “fraud” and “minor” are identical in all the three Acts. In the Madhya Pradesh Act, the word 'allurement' has been used to describe offer of any temptation in the form of any gift or gratification either in cash or kind or grant of any material benefit, either monetary or otherwise. In the Himachal Pradesh and Orissa Acts, instead of the word 'allurement' the word 'inducement' has been defined, but the definition is identical. In most other aspects also, all the three Acts are identical.

9. The Apex Court in the case referred to above has upheld the right to propagate a religion, but at the same time, in no uncertain terms has also held that the right to propagate one's own views does not give any person the right to convert anybody else except if the person converts of his own free will.

10. Propagation can take place in many manners. Today in this electronic world we are flooded with religious channels on the electronic media. There are many god men floating all over the country espousing different religions and beliefs. Nobody can stop their activities as long as they act within the bounds of law. What the main provisions of the Act do is to prevent conversion by “force”, “fraud” or “inducement”. These provisions have already been upheld by the Apex Court, though in the context of Madhya Pradesh and Orissa Acts. Therefore, the petitioners cannot be permitted to challenge those

::: Downloaded on - 27/04/2024 17:39:07 :::CIS

provisions of the Act, which are identical to the provisions of the Madhya Pradesh and Orissa Acts.

11. Though many issues have been raised before us, we are not even entertaining the same in view of the pronouncement of the Apex Court referred to above. We may, however, to be fair to the petitioners and Mr. Sudhir Nandarajog, learned senior counsel for the petitioners, make reference to the issues raised.

12. It has been urged before us that the definition of the words "force", "fraud" and "inducement" are very vague and liable to be misused. Merely because a definition is liable to be misused does not mean that the Act should be struck down. As and when the provisions of the Act are misused, the affected party can approach the Court for redressal. In any event, all these matters stand squarely covered by the judgment in the cases referred to above and, therefore, such arguments cannot be permitted to be raised before us.

13. It has also been urged before us that Article 13 (2) prohibits the Legislature from enacting any law which infringes the rights guaranteed under Part III of the Constitution which would include Article 25 of the Constitution of India. It has also been urged before us that there are two proselytizing religions, i.e. Islam and Christianity - to spread the word of God is an inherent part of these religions and, therefore, the State cannot put any restriction on this religious practice of proselytization. We cannot accept this argument because the Apex Court in no uncertain terms has held that though the right to propagate may be a fundamental right, but there is no fundamental right to convert.

High Court of H.P.

::: Downloaded on - 27/04/2024 17:39:07 :::CIS

14. We are proud of our multi-cultural heritage where people belonging to all religions, thoughts and beliefs have amalgamated into our society. Indian culture is such that we have accepted into our fold believers and non-believers. Indian Society has not discriminated against any religion or thought. At the same time, we cannot permit religions, which advance proselytization and encourage conversions, to carry out these conversions by "force", "fraud" or "inducement".

15. Christianity entered and flourished in India right from the time when St. Thomas Aquinas came to India in 52 A.D. Jews found asylum in India both in Kochi in Kerala and in the North Eastern parts of the country. Zoroastrians entered India at Navsari to escape persecution in Persia. Today, though the number of Jews may have dwindled, Christians and Parsis have flourished and attained high offices in the country. Islam is now the second largest religion of the country. Though, by peaceful propagation, each religion may expand the number of its followers, there have to be limitations on the manner in which conversions are carried out and no civilized society can permit conversions to be carried out by "force", "fraud" or "inducement". The word of God cannot be spread either through the sword or by the use of money power.

16. The right to propagate one's religion may entitle a person to extol the virtues of the religion which he propounds. He, however, has no right to denigrate any other religion, thought or belief. One may promise heaven to the followers of one's religion, but one cannot say that damnation will follow if that path is not followed. The essence of secularism is tolerance and acceptance of all religions. The right to propagate can never include the right to denigrate any other thought,

High Court of H.P.

::: Downloaded on - 27/04/2024 17:39:07 :::CIS

religion or belief. Therefore, though the right to propagate may be a fundamental right but the right to convert, as held by the Apex Court, is not a fundamental right.

17. Religion is a matter of faith and belief, but all religions do not believe in 'God'. Reference in this behalf may be made to the judgment of the Apex Court in **The Commissioner, Hindu Religious Endowments, Madras versus Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282,** wherein the Apex Court made the following pertinent observations:

> *"Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but it would not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress."*

18. In **Ratilal Panachand Gandhi and others versus State of Bombay and others, AIR 1954 SC 388,** the Apex Court again observed as follows:

> *"It may be noted that 'religion' is not necessarily theistic and in fact there are well-known religions in India like Buddhism and Jainism which do not believe in the existence of God or of any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs and doctrines which are regarded by those who profess that religion to be conducive to their spiritual well being, but it would not be correct to say, as seems to have been suggested by one of the learned Judges of the Bombay High Court, that matters of religion are nothing but matters of religious faith and religious belief. A religion is not merely an opinion, doctrine or belief. It has its outward expression in acts as well."*

High Court of H.P.

::: Downloaded on - 27/04/2024 17:39:07 :::CIS

19. The right of freedom of opinion, the right of freedom of conscience by themselves include the extremely important right to disagree. Evey society has its own rules and over a period of time when people only stick to the age old rules and conventions, society degenerates. New thinkers are born when they disagree with well accepted norms of society. If everybody follows the well-trodden path, no new paths will be created, no new explorations will be done and no new vistas will be found. We are not dealing with vistas and explorations in the material field, but we are dealing with higher issues. If a person does not ask questions and does not raise issues questioning age old systems, no new systems would develop and the horizons of the mind will not be expanded. Whether it be Budha, Mahavira, Jesus Christ, Prophet Mohammad, Guru Nanak Dev, Martin Luther, Kabir, Raja Ram Mohan Roy or Swami Dayanand Saraswati, new thoughts and religious practices would not have been established, if they had quietly submitted to the views of their forefathers and had not questioned the existing religious practices, beliefs and rituals.

20. In a secular country, every belief does not have to be religious. Even atheists enjoy equal rights under our Constitution. Whether one is a believer, an agnostic or an atheist, one enjoys complete freedom of belief and conscience under our Constitution. There can be no impediments on the aforesaid rights except those permitted by the Constitution. This right of freedom of conscience and belief also includes the very important right to change one's own belief. Every person has a right to question the beliefs of others in a civilized manner without deriding or casting aspersions on the beliefs of the others. Every human being also has a right to question and change his

High Court of H.P.

::: Downloaded on - 27/04/2024 17:39:07 :::CIS

own belief. However, this change must be an act of his own conscience - an act which has come from within himself, an act uninfluenced by "force", "fraud" or "inducement". If a person changes his religion or belief of his own volition then the State has no role to play. On the other hand, if persons are made to change their religion due to "force", "fraud" or "inducement", this would wreck the very basic framework of our society and lead India to total annihilation. No law can be permitted to be interpreted in such a manner that the very being of our secular country is put at stake.

21. The right to dissent is one of the most important rights guaranteed by our Constitution. As long as a person does not break the law or encourage strife, he has a right to differ from every other citizen and propagate what he believes is his belief. **A.D.M. Jabalpur versus Shivakant Shukla, (1976) 2 SCC 521,** is a shining example of a dissent which is much more valuable than the opinion of the majority.

22. Coming to the provisions of the Act and the Rules, which are not found in the Madhya Pradesh and Orissa Acts, we may refer to Section 4 of the Himachal Pradesh Act, which reads as follows:

> *"4. (1) A person intending to convert from one religion to another shall give prior notice of at least thirty days to the District Magistrate of the district concerned of his intention to do so and the District Magistrate shall get the matter enquired into all by such agency as he may deem fit:*
>
> *Provided that no notice shall be required if a person reverts back to his original religion.*
>
> *(2) Any person who fails to give prior notice, as required under sub-section (1), shall be punishable with fine which may extend to one thousand rupees."*

23. Section 8 of the Act empowers the State to frame rules, which have to be placed before the Legislative Assembly and we are concerned with Rules 3, 4, 5 and 6, which read as follows:

::: Downloaded on - 27/04/2024 17:39:07 :::CIS

*"**3. Notice before conversion**- (1) Any person domiciled in the State, intending to convert his religion, shall give a notice to the District Magistrate of the District in which he is permanently resident, prior to such conversion, in Form-A.*

(2) The District Magistrate shall cause all notices received under sub-rule (1) of rule 3 to be entered in a Register of Notices and Complaints of conversion in Form-B, and may within fifteen days from the receipt of said notice, get the matter enquired into by such agency as he may deem fit and record his findings as regards the particulars of notice given:

Provided that the person giving notice and any other person likely to be prejudicially affected shall be given adequate opportunity to associate himself with any such enquiry.

***4. Inquiries in other cases –** Where on the basis of any complain or any information laid before him, the District Magistrate is of the opinion, for reasons to be recorded,-*

(a) that force or inducement have been used or is likely to be used in any conversion within the local limits of his jurisdiction; or

(b) that a conversion has taken place without notice in contravention of the provisions of this Act, he may cause an inquiry to be made in the matter and proceed in the manner as provided in Rule 3.

Every such complaint so received shall be entered in the Register of Notices and Complaints of conversion in Form-B.

***5. Registration and Investigation of Case –** If after enquiry under rule 3 or rule 4, as the case may be, the District Magistrate records a finding that a conversion has taken place or is likely to take place through the use of force or inducement or without the requisite notice, he shall enter the particulars of the case in the Register of Forced Conversion in Form-C and refer the case alongwith all material adduced during the course of the enquiry to the Police Station in which the person is resident or where the conversion is intended or done for registration of a case and its investigation*

***6. Sanction for Prosecution –** If after investigating the matter, it appears that an offence under Sub-section (2) of section 4 or under section 5 has been committed, the Investigation Officer shall place all relevant material before the authority empowered under Section 7 to grant prosecution sanction and such sanction shall be granted or refused within a period of 7 days, giving reasons in writing."*

24. An important issue which has been raised in these cases is with regard to the right to privacy of a person wanting to change his

High Court of H.P.

::: Downloaded on - 27/04/2024 17:39:07 :::CIS

beliefs. Section 4 of the Himachal Pradesh Act lays down that a person intending to convert from one religion to another should give notice thirty days prior to his conversion to the District Magistrate of the District concerned, who shall get the matter enquired into by such agency as he may deem fit. The proviso to Section 4 (1) lays down that no notice shall be required if a person reverts back to his original religion. In case of violation of sub-section (1) of Section 4, the person, who fails to give notice, would be punishable with fine which may extend up to ₹ one thousand.

25. Rule 3 provides that any person domiciled in the State, intending to convert his religion, shall give notice to the District Magistrate of the District in which he is permanently resident, prior to such conversion, in Form-A. Thereafter, the District Magistrate is required to cause all notices to be entered in a Register of Notices and Complaints in Form-B and within fifteen days from the receipt of notice may get the matter enquired into by such agency as he deems fit and record his findings as regards the particulars of notice given. The proviso lays down that the District Magistrate, before passing any order, must given adequate opportunity in the enquiry to the person giving notice and any other person who is likely to be prejudicially affected.

26. Rule 5 lays down that if the District Magistrate is of the opinion that the conversion has taken place or is likely to take place through use of force or inducement or without requisite notice, he shall refer the case alongwith all material adduced in the course of the enquiry to the police for registration of a case and its investigation. The prosecution sanction can be given by the District Magistrate or such

::: Downloaded on - 27/04/2024 17:39:07 :::CIS

authority authorized by him not below the rank of Sub Divisional Officer.

27. In this case, the main issue with which we are concerned is whether the fundamental rights of the person, who is converting (hereinafter referred to as the convertee), are being adversely affected by Section 4 and Rules 3 and 5?

28. We may, at this stage itself, point out that neither the Madhya Pradesh Act nor the Rules made thereunder provide that the convertee should give notice before conversion. In the Madhya Pradesh Act, it is the person who is converting any other person from one religious faith to another, such as a religious priest, who is required to give notice of such conversion to the District Magistrate. Every conversion may not entail the performance of a ceremony. True it is, that in some religions, before initiation into the religion, some ceremony has to be performed, but this is not applicable to all religions.

29. Under the Orissa Act, there is also no provision for giving advance notice by the convertee. However, Rule 4 of the Orissa Freedom of Religion Rules, which were enacted in the year 1999, reads as follows:

> *"Any person intending to convert his religion, shall give a declaration before a Magistrate, 1st Class, having jurisdiction prior to such conversion that he intends to convert his religion on his own will."*

30. As per this rule, any person intending to convert his religion is directed to give a declaration before a Magistrate 1st Class prior to such conversion that he intends to convert his religion of his own free will. There is no time period prescribed. The non-filing of such declaration is not an offence. Under Rule 8 of the Orissa Rules,

::: Downloaded on - 27/04/2024 17:39:07 :::CIS

only contravention of Rules 5 and 6 is an offence, but contravention of Rule 4 is not an offence.

31. Therefore, we find that the Himachal Pradesh Act has gone much further than the Madhya Pradesh or Orissa Acts as far as the convertee is concerned. We have earlier discussed that our Constitution ensures that no person living in India can be denied equality under the law or the benefits of Part-III of the Constitution of India and every person is entitled to his freedoms, which are guaranteed under Part-III of the Constitution of India. These rights, which are commonly known as fundamental rights, are, in fact, human rights. These rights inhere in every human being and in every civilized society, we must respect such rights. The right to privacy is one of such rights and has been the subject matter of interpretation in a number of cases.

32. In **Govind versus State of Madhya Pradesh and another, AIR 1975 Supreme Court 1378,** the Apex Court after discussing various articles and decisions of the Courts, both from India and abroad, held as follows:

> *"22. There can be no doubt that privacy-dignity claims deserve to be examined with care and to be denied only when an important countervailing interest is shown to be superior. If the Court does not find that a claimed right is entitled to protection as a fundamental privacy right, a law infringing it must satisfy the compelling state interest test. Then the question would be whether a state interest is of such paramount importance as would justify an infringement of the right. Obviously, if the enforcement of morality were held to be a compelling as well as a permissible state interest, the characterization of a claimed right as a fundamental privacy right would be of far less significance. The question whether enforcement of morality is a state interest sufficient to justify the infringement of a fundamental privacy right need not be considered for the purpose of this case and therefore we refuse to enter the controversial thicket whether enforcement of morality is a function of state.*

::: Downloaded on - 27/04/2024 17:39:07 :::CIS

23. Individual autonomy, perhaps the central concern of any system of limited government, is protected in part under our Constitution by explicit constitutional guarantees. "In the application of the Constitution our contemplation cannot only be of what has been but what may be". Time works changes and brings into existence new conditions. Subtler and far-reaching means of invading privacy will make it possible to be heard in the street what is whispered in the closet. Yet, too broad a definition of privacy raises serious questions about the propriety of judicial reliance on a right that is not explicit in the Constitution. Of course, privacy primarily concerns the individual. It therefore relates to and overlaps with the concept of liberty. The most serious advocate of privacy must confess that there are serious problems of defining the essence and scope of the right. Privacy interest in autonomy must also be placed in the context of other rights and values.

24. Any right to privacy must encompass and protect the personal intimacies of the home, the family, marriage, motherhood, procreation and child rearing. This catalogue approach to the question is obviously not as instructive as it does not give analytical picture of the distinctive characteristics of the right of privacy. Perhaps, the only suggestion that can be offered as unifying principle underlying the concept has been the assertion that a claimed right must be a fundamental right implicit in the concept of ordered liberty.

25. Rights and freedoms of citizens are set forth in the Constitution in order to guarantee that the individual, his personality and those things stamped with his personality shall be free from official interference except where a reasonable basis for intrusion exists. "Liberty against government" a phrase coined by Professor Corwin expresses this idea forcefully. In this sense, many of the fundamental rights of citizens can be described as contributing to the right to privacy."

33. In **R. Rajagopal alias R.R. Gopal and another versus State of Tamil Nadu and others, AIR 1995 Supreme Court 264,** examining the concept of right to privacy, the Apex Court held as follows:

"24. We may now consider whether the State or its officials have the authority in law to impose a prior restraint upon publication of material defamatory of the State or of the officials, as the case may be? We think not. No law empowering them to do so is brought to our notice. As observed in New York Times v. United States ((1971) 403 US 713), popularly known as the pentagon papers case, "any system of prior restraints of (freedom of) expression comes to this Court bearing a heavy presumption against its constitutional validity" and that in such cases, the Government "carries a heavy burden of showing

::: Downloaded on - 27/04/2024 17:39:07 :::CIS

> *justification for the imposition of such a restraint." We must accordingly hold that no such prior restraint or prohibition of publication can be imposed by the respondents upon the proposed publication of the alleged autobiography of 'Auto Shankar' by the petitioners. This cannot be done either by the State or by its officials. In other words, neither the Government nor the officials who apprehend that they may be defamed, have the right to impose a prior restraint upon the publication of the alleged autobiography of Auto Shankar. The remedy of public officials/public figures, if any, will arise only after the publication and will be governed by the principles indicated herein.*
>
> *25. We must make it clear that we do not express any opinion about the right of the State or its officials to prosecute the petitioners under Sections 499/500, I.P.C. This is for the reasons that even if they are entitled to do so, there is no law under which they can prevent the publication of a material on the ground that such material is likely to be defamatory for them."*

34. Our attention has also been drawn to the judgment of the Delhi High Court in **Pranav Kumar Mishra and another versus Government of NCT of Delhi and another, WP (C) No. 748 of 2009,** decided on 08.04.2009. In this case, the petitioners, by means of the writ petition, had challenged the practice of posting the notice of intended marriage under the Special Marriages Act, 1954, at the residential address of both parties to the marriage as also through the Station House Officer of the police station concerned for the purpose of verification of address. The petitioners, who were of marriageable age, prayed that they do not want that such notices be sent to their residences.

35. The Delhi High Court after considering the rival contentions came to the conclusion that there is no requirement of posting of notice to the applicants' addresses and held that the dispatch of such notices would amount to breach of their right to privacy and held as follows:

::: Downloaded on - 27/04/2024 17:39:07 :::CIS

> *"8. It becomes clear on a textual reading of the relevant provisions of the Act and the information procured from the website of the Govt. of Delhi that no requirement of posting of notice to applicants' addresses or service through the SHO, or visit by him is prescribed in either the Act or the website. The petitioner's concerns and apprehensions are justified. Absent any legal compulsion – as is the position – for sending notices to residential addresses in case of solemnization of the marriage, in terms of Sections 4 and 5, their dispatch can well amount to breach of the right to privacy, which every individual is entitled to (Ref Govind vs. State of MP, (1975) 2 SCC 148, R.Rajgopal vs. State of T.N. (1994) 6 SCC 632, District Regisrar and Collector vs. Canara Bank (2005) 1 SCC 496.*
>
> *9. It is to be kept in mind that the Special Marriage Act was enacted to enable a special form of marriage for any Indian national, professing different faiths, or desiring a civil form of marriage. The unwarranted disclosure of matrimonial plans by two adults entitled to solemnize it may, in certain situations, jeopardize the marriage itself. In certain instances, it may even endanger the life or limb of one at the other party due to parental interference."*

One of the considerations, which weighed with the Delhi High Court was that, in fact, the life and limb of the parties solemnizing marriage against the wishes of the parents would be endangered and the marriage would be jeopardized, if such notices were sent.

36. The Apex Court in **Ram Jethmalani and others versus Union of India and others, (2011) 8 Supreme Court Cases 1,** was dealing with a case where the petitioner wanted that the names of those Indian citizens, who had stashed away huge amounts of illegally begotten money in Banks in Abroad may be published. The Apex Court dealing with the right to privacy held as follows:

> *"83. Right to privacy is an integral part of right to life. This is a cherished constitutional value, and it is important that human beings be allowed domains of freedom that are free of public scrutiny unless they act in an unlawful manner. We understand and appreciate the fact that the situation with respect to unaccounted for monies is extremely grave. Nevertheless, as constitutional adjudicators we always have to be mindful of preserving the sanctity of constitutional values, and hasty steps that derogate from fundamental rights, whether urged by Governments or private citizens, howsoever well*

::: Downloaded on - 27/04/2024 17:39:07 :::CIS

> *meaning they may be, have to be necessarily very carefully scrutinised. The solution for the problem of abrogation of one zone of constitutional values cannot be the creation of another zone of abrogation of constitutional values.*
>
> .....
>
> *88. The revelation of details of bank accounts of individuals, without establishment of prima facie grounds to accuse them of wrongdoing, would be a violation of their rights to privacy. Details of bank accounts can be used by those who want to harass, or otherwise cause damage, to individuals. We cannot remain blind to such possibilities, and indeed experience reveals that public dissemination of banking details, or availability to unauthorised persons, has led to abuse."*

37. A person not only has a right of conscience, the right of belief, the right to change his belief, but also has the right to keep his beliefs secret. No doubt, the right to privacy is, like any other right, subject to public order, morality and the larger interest of the State. When rights of individuals clash with the larger public good, then the individual's right must give way to what is in the larger public interest. However, this does not mean that the majority interest is the larger public interest. Larger public interest would mean the integrity, unity and sovereignty of the country, the maintenance of public law and order. Merely because the majority view is different does not mean that the minority view must be silenced.

38. It has been strongly urged By Mr. R.K. Bawa, learned Advocate General, on behalf of the State that the right to privacy is not an indefeasible right. There can be no quarrel with this proposition. However, the State must have material before it to show what are the very compelling reasons which will justify its action of invading the right to privacy of an individual. A man's home is his castle and no invasion into his home is permissible unless justified on constitutional grounds. A man's mind is the impregnable fortress in which he thinks and there can be no invasion of his right of thought unless the person is

::: Downloaded on - 27/04/2024 17:39:07 :::CIS

expressing or propagating his thoughts in such a manner that it will cause public disorder or affect the unity or sovereignty of the country.

39. Why should any human being be asked to disclose what is his religion? Why should a human being be asked to inform the authorities that he is changing his belief? What right does the State have to direct the convertee to give notice in advance to the District Magistrate about changing his rebellious thought?

40. A person's belief or religion is something very personal to him. The State has no right to ask a person to disclose what is his personal belief. The only justification given is that public order requires that notice be given. We are of the considered view that in case of a person changing his religion and notice being issued to the so called prejudicially affected parties, chances of the convertee being subjected to physical and psychological torture cannot be ruled out. The remedy proposed by the State may prove to be more harmful than the problem.

41. In case such a notice is issued, then the unwarranted disclosure of the voluntary change of belief by an adult may lead to communal clashes and may even endanger the life or limb of the convertee. We are not, in any manner, condoning or espousing conversions especially by “force”, “fraud” or “inducement”. Any conversion, which take place by “force”, “fraud” or “inducement”, must be dealt with strictly in accordance with law which we have held to be valid. At the same time, the right to privacy and the right to change the belief of a citizen cannot be taken away under the specious plea that public order may be affected. We are unable to comprehend how the issuance of a notice by a convertee will prevent conversions by “fraud”,

High Court of H.P.

::: Downloaded on - 27/04/2024 17:39:07 :::CIS

"force" or "inducement". In fact, this may open a Pandora's box and once notice is issued, this may lead to conflicts between rival religious outfits and groups. No material has been placed on record by the State to show that there has been any adverse effect on public order by any conversion in the State whether prior to or after the enactment of the Himachal Pradesh Act. In fact, till date only one case has been registered under this Act.

42. As observed by us above, conversions may not require any ceremony in some religions and how will the Government determine when the thought process of a person has changed. A person who belongs to A religion and willingly wants to convert to B religion will not change his religion overnight, except in case of forced conversions or conversions which take place due to payment of cash or other material gifts. Change of religion, when it is of its own volition, will normally be a long drawn out process. If a person of his own volition changes his religion, there is no way that one can measure or fix the date on which he has ceased to belong to religion A and converted to religion B. This has to be an ongoing process and therefore, there can be no notice of thirty days as required under the Himachal Pradesh Act.

43. Furthermore, we are of the view that the proviso to Section 4 is also discriminatory and violative of Article 14 of the Constitution of India. "Original religion" has not been defined in the Himachal Act. According to Dr. Subramanian Swamy, the original religion is Hindu religion alone. We cannot accept this submission of his. The general consensus of opinion used was that the original religion would be the religion of the convertee by birth, i.e. the religion he was born into.

High Court of H.P.

::: Downloaded on - 27/04/2024 17:39:07 :::CIS

44. We fail to understand the rationale why if a person is to revert back to his original religion, no notice is required. It was urged before us that since he was born in his religion and knows his religion well, therefore, it was thought that while reverting back to his original religion, no notice be issued. This argument does not satisfy the parameters of Article 14 of the Constitution of India. Supposing a person born in religion A converts to religion B at the age of 20 and wants to convert back to religion A at the age of 50, he has spent many more years, that too mature years, being a follower of religion B. Why should he not be required to give notice?

45. Another question which is troubling us is if a person born in religion A, converts to religion B, then converts to religion C and then to religion D. If he converts back to religion B or C, he is required to give notice, but if he converts back to religion A, then no notice is required. This also, according to us, is totally irrational and violative of Article 14 of the Constitution of India.

46. We also fail to understand why a person, who fails to give such notice, should be required to pay a fine, which may extend up to ₹ 1,000/-. We can understand the feelings of the State in enacting the law. We are also of the view that conversion by "force", "fraud" or "inducement" should be dealt with strictly and should be discouraged. But, by and large, it is the poor and the down-trodden, who are converted by "force", "fraud" or "inducement". By enacting Section 4 and making the non-issuance of the notice a criminal offence, the State has, in fact, made these poor and down-trodden people criminals, whereas the main thrust of the Act should have been to deal strictly

::: Downloaded on - 27/04/2024 17:39:07 :::CIS

with the persons who convert people by "force", "fraud" or "inducement".

47. We also found many flaws in the Rules. Rule 3 requires that any person domiciled in the State intending to convert must give notice to the District Magistrate of the District of which he is a permanent resident. Supposing a person is a permanent resident of District Shimla, who is staying in Delhi. He decides to convert at Delhi. The conversion, if any, would take place at Delhi. The State of Himachal Pradesh has no jurisdiction over the Union Territory of Delhi. In Delhi, there is no law corresponding to the H.P. Freedom of Religion Act. If such conversion is not illegal in Delhi, why should such person be required to give notice in Himachal Pradesh? How can such a person be virtually treated to be a criminal when the act of conversion is legal at Delhi? There are other flaws also in the Rules inasmuch as they are totally vague and do not specify the agency, through which the District Magistrate should carry out the enquiry. But, since we are of the view that Section 4 itself is ultra vires the Constitution of India, the corresponding rules must fall and we need not go into a detailed discussion of those rules.

CWP No. 4716 of 2011

48. As far as CWP No. 4716 of 2011 is concerned, one of the issues raised is that the prosecution of the petitioner is totally illegal. We found that the prosecution was initiated many years back. More than three years have been expired and the criminal case is at the stage of evidence. Therefore, without expressing any opinion on the merits of the case, we dispose of the writ petition with a direction that the case No. RBT 50/3 of 2011/08 shall stand transferred to the Court of Chief

High Court of H.P.

::: Downloaded on - 27/04/2024 17:39:07 :::CIS

Judicial Magistrate, Shimla, who is further directed to ensure that the proceedings in this case are completed latest by **31st December, 2012.**

49. In view of the above discussion, we allow the petitions to a limited extent and strike down Section 4 of the Himachal Pradesh Freedom of Religion Act, 2006 and Rule 3 of the Himachal Pradesh Freedom of Religion Rules, 2007 as being violative of Article 14 and ultra vires the provisions of the Constitution of India. Rule 5 only insofar as it relates to actions relating to Section 4 is also held to be ultra vires. However, all other provisions of the Act and the Rules are held to be legal and valid. Both the petitions are disposed of in the aforesaid terms. No order as to costs.

(Deepak Gupta)
Judge

(Rajiv Sharma)
Judge

August 30, 2012
(rajni)

High Court of H.P.

::: Downloaded on - 27/04/2024 17:39:07 :::CIS