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REPORTABLE

IN THE SUPREME COURT OF INDIA

ORIGINAL CIVIL JURISDICTION

WRIT PETITION (CIVIL) No.103 OF 2014

KARMA DORJEE & ORS .....PETITIONERS

Versus

UNION OF INDIA AND ORS .....RESPONDENTS

WITH

WRIT PETITION (CIVIL) No.111 OF 2014

J U D G M E N T

Dr D Y CHANDRACHUD, J

The petitioners are advocates and have initiated these proceedings under Article 32 of the Constitution, in public interest for guidelines to be set down to curb acts of discrimination against persons from the north-eastern

2

states. The petitioners speak of the paradox of secular India where on the one hand, students from the north-eastern states who move to other parts of the country in search of employment and education, learn in the process the culture and traditions of the rest of the country while on the other hand, there is an absence of reciprocating sensitivity towards and awareness of their concerns. They have drawn attention to the discrimination prevalent in society against citizens of the nation drawn from the north-eastern states. Such acts of discrimination violate the fundamental duty under Article 51A(e) which is :

â¬ S to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of womenâ¬ \235.

In order to support the plea with factual details the petitioners have adverted to instances which were reported in the print media since 2009. On 26 October 2009, a single woman is alleged to have been burnt to death in the kitchen of her home by a stalker whose unwelcome advances she had rebuffed. On 17 April 2012, a young student from Manipur is alleged to have died after being assaulted in a hostel. In August 2012, panic is alleged to have been created amongst a community of persons residing in Karnataka as a result of the circulation of hostile messages on social media. On 29 May 2013, a young Manipuri girl is alleged to have been murdered in a rented

3

apartment in the national capital. On 25 January 2014, two young women from the north-east were subject to racial taunts and molestation and so on thereafter on 29 January 2014, a young student was racially ridiculed and assaulted to death in the Lajpat Nagar area of New Delhi. These instances have been alluded to not with a view to seeking the intervention of the court in specific cases (the law has been set into motion to deal with such instances of hate crime) but to establish the need for the issuance of guidelines which will bring about a systemic approach to addressing the problem.

2 The relief which the petitioners seek is a mandamus directing :

I) The Union Government as well as the States to formulate a mechanism to deal with racial atrocities;

II) Directing the Government of Delhi to constitute a special investigation team headed by a former judge of this Court to investigate into atrocities committed in specific instances;

III) Directing the Union and the States to frame a proper mechanism to deal with cases of racial intolerance and discrimination; and

IV) To all authorities to undertake programmes for inculcating

awareness and to sensitise both the public and the law enforcing machinery.

3 Article 15 of the Constitution prohibits discrimination on grounds of religion, race, caste, sex or place of birth. The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) was adopted by the United Nations General Assembly on 21 December 1965. India ratified the Convention in 1968. The Convention has come into force on 4 January 1969.

4

Article 2 of the Convention imposes the following obligation on the States Parties :

â¬ S Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end: (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;

(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

(e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other

5

means of eliminating barriers between races, and to discourage anything which tends to strengthen racial divisionâ¬ \235.

Under Article 5 all states parties have undertaken to prohibit and eliminate racial discrimination in all its forms notably, in the enjoyment of the following rights (amongst others) :

(i) Equal treatment in the administration of justice;

(ii) Right to security of person;

(iii) Political rights including participation in elections;

(iv) Civil rights;

(v) Right to freedom of movement and residence;

(vi) Right to freedom of thought, conscience and religion and to express oneâ¬ "!s opinion;

(vii) Economic, social and cultural rights;

(viii) Right to work and to free choice of employment; and

(ix) Right of housing, public health, medical care, social security, education and training and access to any public place.

India being a signatory to the Convention is duty bound to enforce its obligations under the law. The provisions of the Convention are of significance while construing the nature and ambit of the constitutional guarantee contained in Article 15 of the Constitution. Indiaâ¬ "!s obligations under

an international convention designed to protect fundamental human rights must be read into the constitutional guarantee against racial discrimination. A consensus in the international community of nations, in which India is a vibrant

6
participant, must infuse the content of our own constitutional guarantees. As this Court held in Vishaka v. State of Rajasthan 1 :
â¬ S...The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the field when there is no inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic lawâ¬ \235. [id at page 251]
[See also C Masilamani Mudaliar v. Idol of Sri Swaminathaswami Swaminathaswami Thirukoil 2
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The provisions of domestic legislation in India in fact buttress and support the obligations which have been assumed by the country under CERD. The Protection of Human Rights Act, 1993 defines the expression â¬ SInternationa l Covenantsâ¬ \235 thus :
â¬ S 1[(f) â¬ SInternational Covenantsâ¬ \235 means the International covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on the 16 th December, 1966 and such other Covenant or Convention adopted by the General Assembly of the United Nations as the Central Government may, by notification, specify;]â¬ \235
1 (1997) 6 SCC 241
2 (1996) 8 SCC 525 at paragraphs 18 to 21

7
The Union Government has issued a standing order dated 21 September 2010 3
, specifying CERD "as an international covenant in its application to the protection of human rights in India".
4 In order to deal with the concerns of persons hailing from the north-eastern states and residing in different parts of the country, particula rly in the metropolitan cities, the Union Government constituted a Committee on 5 February 2014. The Committee was chaired by Shri M P Bezbaruah, a member of the North-eastern Council. After consulting various stake holders, the Committee submitted its report to the Union Ministry of Home Affairs on 11 July 2014. The Committee categorised its recommendations into three categories :
(a) immediate measures which need to be implemented within six months to one year;
(b) short term measures which need to be implemented within a period of one to one and a half years; and
(c) long term measures which need to be implemented within a period of one and a half to two years.
The Union Government has stated in its counter affidavit dated 15 Octobe r 2015 filed in these proceedings that the recommendations made by the Committee with regard to immediate measures have been accepted and action has been taken to implement the recommendations so as to address
3 SO 2339(e)

8
the concerns of citizens from the north-eastern states residing in New D elhi and in other parts of the country. The recommendations of the Bezbaru ah

Committee on immediate measures traverse the following areas :
(i). legal measures, including either a new statutory provision or an amendment of existing law;
(ii). facilities for legal assistance;
(iii). strengthening of law enforcement agencies;
(iv). special police initiatives including proactive regional action;
(v). utilising the bonding power of sports;
(vi). educating the people about the north-east;
(vii). greater focus on the north-east in the Information and Broadcasting media;
(viii). appointment of nodal officers by each state government ; and
(ix). Accommodation related issues including problems of rent.
Implementation of the recommendations has been suggested by the report of the Committee as follows:
â¬ S 11.12 Implementation
11.12.1 An effective monitoring mechanism therefore should be built into the system. We recommend that a high level committee should be set up under the Home Ministry with representatives of Ministry of DoNER, Ministry of Home Affairs, Resident Commissioners, Delhi Police and suitable representation from the Civil Society Organizations working for the concerns of the North East people.
11.12.2 The Committee should have powers to ensure implementation and the powers and functions should be clearly laid down. The powers given to the Committee should also enable it to fix accountability and the concerned Ministries should act upon the decisions of the Committee within a specified time. The committee should meet at

9
least once a quarter and review the implementation of the many initiatives.
11.12.3 The nodal officer from police proposed to be placed in the MHA should be the convener and the member secretary of the committee.
11.12.4 The results of review by the committee should be uploaded in the network of North East Police Cell and later on should be linked to be North East network recommended by usâ¬ \235.

An effective monitoring mechanism has been suggested by the Bezbaruah Committee. This should commend itself once the Union government has accepted the recommendations on immediate measures. The Bezbaruah Committee report should not like innumerable instances of its ilk, languish in dusty shelves of long forgotten archives. The acceptance by the Union government is a statement of what it calls a â¬ Szero toleranceâ¬ \235 p olicy towards discrimination against Indian citizens hailing from the north-east. The court as a protector of human rights is within jurisdiction in ensuring that this assurance translates into reality.
5 The Union Ministry of Home Affairs has stated before the Court both in its initial counter as well as in an additional affidavit filed on 20 September 2016 that a proposal for amending the Indian Penal Code by the insertion of two new provisions - Section 153C and Section 509A - is under examination. These amendments will deal with offences involving racial matters. Sections

10
153A, 153B and 505(2) which already exist as a part of the Indian Penal Code provide as follows :
â¬ S 153A Promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony .--(1) Whoever-
(a) by words, either spoken or written, or by signs

or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity,

(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community, shall be punished with imprisonment

which may extend to three years, or with fine, or with both.

Offence committed in place of worship, etc .-(2)Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]

153B .

Imputations, assertions prejudicial to national integration .

(1) Whoever, by words either spoken or written or by signs or by visible representations or otherwise,-

(a) makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or

(b) asserts, counsels, advises, propagates or publishes that any class of persons by reason of their being members of any religious, racial, language or regional group or caste or community be denied, or deprived of their rights as citizens of India, or

(c) makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons, shall be punished with imprisonment which may extend

to three years, or with fine, or with both.

12
(2) Whoever commits an offence specified in sub-section (1), in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.
505 . Statements conducing public mischief . (2) Statements creating or promoting enmity, hatred or ill-will between classes .--Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.â¬ \235

Since the subject falls in the Concurrent List of the Seventh Schedule to the Constitution wide consultations with the state governments are being undertaken before bringing out any amendments to the law. Whether the law should be amended is for the Union government to decide in its considered assessment of the situation, the nature of the problem and the efficacy of existing provisions. A mandamus to legislate cannot be issued.
6 The implementation of the recommendations of the Bezbaruah Committee is being monitored by the Union Ministry of Home Affairs and the last review meeting was held on 12 May 2016. The Court has been apprised of the fact that the Union Ministry of Home Affairs has issued several

13
advisories to the state governments. These advisories include advisories dated 10/14 May 2012, 3 June 2013, 5 February 2014, 6 February 2014, 12 October 2015 and 23 May 2016. These advisories relate to various aspects and are intended to deal with discrimination and racial profiling faced by Indian citizens hailing from north-eastern states. The advisories, inter alia, deal with compulsory registration of First Information Reports under Section 154 of the Cr.P.C. when the information makes out a cognizable offence and in regard to the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015.
7 The Union Government has in its counter affidavit also indicated the steps which have been taken by the Delhi Police to inculcate a sense of security amongst persons from the north-east. During the course of the hearing on 17 October 2016 this Court was of the view that the Ministry of Home Affairs may initially monitor the steps being taken particularly by the Delhi Police so that the model can be replicated in other parts of the country. In pursuance of these observations, a further affidavit has been filed on 26 October 2016 on behalf of the Union Ministry of Home Affairs stating that an officer of the rank of Additional Commissioner of Police hailing from the north-east has been designated to be in-charge of a special police unit from the north-eastern region. Similarly, an officer of the rank of Joint Commissioner of Police/IGP has been appointed as nodal officer for dealing

14
with issues pertaining to the north-eastern states. Separate district Additional

Commissioners of Police and DCPs have been appointed as nodal officers to regularly interact with citizens from the north-east residing in their dis tricts.
Steps have been taken for sensitising the police force and special recruitment drives have been undertaken for appointment of citizens from the north-eastern states. Moreover, for Delhi a police officer of the rank of Special Commissioner will supervise the functioning of the Delhi Police as regards problems faced by the people of the north-eastern region. A special helpline (1093) has been introduced on 14 February 2014. A Facebook page â¬ â¬ SDelhi Police for North-east Folksâ¬ \235 was launched on 9 May 2014 and till 15 October 2016, was visited by over 1.50 crore people. A data bank on crimes has been unveiled in February 2014. Representatives have been appointed from students and volunteers. Such a mechanism shall be monitored by the Ministry of Home Affairs and based on the experience gained, it will b e replicated in other metropolitan cities.
8 The monitoring of instances of racial discrimination involving citizens from the north-eastern states involves among other things issues pertaining to law enforcement. However, the involvement of the law enforcement machinery is alone not sufficient to resolve the problem. Mind-sets have to be changed including in the universities, colleges and educational institutions, places of work and in society. Sensitivity and inclusion have to be fostered. In order to

15
achieve this, greater awareness of the history and the rich cultural traditions of the north-east is required to be inculcated. The problems faced by per sons from the north-east traverse a whole range of issues, from the mundane issues of daily life to matters of education, employment, social security and the fundamental right to live in dignity. The Governments, both at the centre and the states have a non-negotiable obligation to take positive steps to give effect to India's commitment to racial equality. This commitment is embodied in constitutional rights, fundamental duties, statutory provisions and in th e international obligations which have been assumed by India.
9 We are of the view that in order to enhance a sense of security and inclusion, the Union Government in the Ministry of Home Affairs should ta ke proactive steps to monitor the redressal of issues pertaining to racial discrimination faced by citizens of the nation drawn from the north-east. For that purpose, a regular exercise of monitoring and redressal should be carried out by a Committee consisting of the following members :
1 Joint Secretary (North-east), Ministry of Home Affairs; and
2 Two other members to be nominated by the Union Government (one of whom should be a public figure).

16
The work of the Committee should be widely publicised in the electronic and print media, including in the north eastern states. The Committee should be accessible to grievances, suggestions and complaints.
The Committee should meet periodically and preferably at monthly intervals to monitor the redressal of all such grievances including the implementation of the recommendations of the Bezbaruah Committee, to the extent to which they have been accepted by the Union Government. The Committee shall carry out the following functions :
a) to monitor, oversee, pursue and review the implementation of the MP Bezbaruah Committee Report dated 11.07.2014;
b) to monitor the initiatives taken by the Government to curb and deal with the incidents of racial discrimination/racial atrocities/racial violence;
c) to monitor action in respect of incidents of racial discrimination/racial atrocities/racial violence, suggest measures and ensure strict action;
d) to receive, consider and entertain complaints from individuals and groups of individuals who claim to be victims of racial abuse/racial atrocities/racial violence/racial discrimination and forward the same to the National Human Rights Commission and/or the State Human Rights

17
Commissions and/or to the jurisdictional Police Station as the case may be for enquiry and necessary action;
e) to issue necessary directions including calling for reports on incidents of racial discrimination/racial atrocities/racial violence from the State Governments/Union Territories.
A decision may also be taken by the Union government on whether any of the other recommendations should be accepted.
10 The writ petitions are accordingly disposed of.

.....CJI
[T S THAKUR]
..â¬ ¦. .....J
[Dr D Y CHANDRACHUD]

.....J
[L NAGESWARA RAO]
New Delhi
December 14, 2016

18
ITEM NO.1E COURT NO.1 SECTION PIL(W)
(For Judgment)
S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
Writ Petition(s)(C) No.103/2014
KARMA DORJEE & ORS Petitioner(s)

VERSUS
U.O.I & ORS Respondent(s)
WITH
W.P.(C) No.111/2014
Date : 14/12/2016 These petitions were called on for pronouncement of judgment today.
For Petitioner(s)
Mr. Arunabh Chowdhury, Adv.
Mr. Anupam Lal Das, Adv.
Ms. Shruti Choudhry, Adv.
Ms. Samten Doma Lachungpa, Adv.
Mr. Anupam Lal Das, Adv.

Mr. Dinesh Kumar Garg, Adv.
For Respondent(s)
Mr. Sunil Fernandes, Adv.
Ms. Astha Sharma, Adv.
Ms. Mithu Jain, Adv.
Mr. Puneeth K.G., Adv.
Mr. Arnav Vidyarthi, Adv.
Mr. Shuvodeep Roy, Adv.
Mr. Pawan Upadhyay, Adv.
Mr. Nishant Kumar, Adv.
Mr. Ratik Sharma, Adv.
Mr. Akash Tyagi, Adv.

19
Ms. Sharmila Upadhyay, Adv.
Mr. C.K. Sasi, Adv.
Mr. Manu Krishnan, Adv.
Mr. C.D. Singh, Adv.
Ms. Sakshi, Adv.
Mr. Suryanarayana Singh, Sr. AAG
Ms. Pragati Neekhra, Adv.
Mr. Sapam Biswajit Meitei, Adv.
Ms. B. Khushbansi, Adv.
Ms. Linthoingambi Thongam, Adv.
Mr. Naresh Kumar Gaur, aDv.
Mr. Ashok Kumar Singh, Adv.
Mr. K.V. Jagdishvaran, Adv.

Mrs. G. Indira, Adv.
Mr. Chand Qureshi, Adv.
Ms. G. Indra, Adv.
Mrs. K. Enatoli Sema, Adv.
Mr. Edward Belho, Adv.
Mr. Amit Kumar Singh, Adv.
Mr. K. Luikang Michael, Adv.
Mr. K.L. Janjani, Adv.
Mr. Pankaj Kumar Singh, aDv.
Ms. Varsha Rana, Adv.
Mr. B. Balaji, Adv.
Mr. Muthuvel Palani, Adv.

Hon'ble Dr. Justice D.Y. Chandrachud pronounced the judgment of the Bench comprising Hon'ble the Chief Justice of India, His Lordship and Hon'ble Mr.Justice L.Nageswara Rao.

The writ petitions are disposed off in terms of the signed reportable judgment.

(ASHOK RAJ SINGH) (VEENA KHERA)
Court Master Court Master

(Signed reportable judgment is placed in the file)