

# **HIGH COURT OF JAMMU AND KASHMIR** **SRINAGAR**

**Case No:** OWP 610/2007

**Dated :** 09-10- 2013

*SANJAY TICKOO AND OTHERS*

*VERSUS*

*STATE & ORS*

## **ORDER SHEET**

### **CORAM:**

**HON'BLE** MR. JUSTICE MUZAFFAR HUSSAIN ATTAR - JUDGE

*Whether approved for reporting :* **Yes**

**FOR THE PETITIONER/s :** MR. SALEEM GUPKARI

**FOR THE RESPONDENT/s** M/S.N.H.SHAH, Dy.AG, M.AIJAZ & H.FURAH

1/ **“SECULAR”**, the expression appearing in the preamble of the Constitution of India, forms the bedrock of this writ petition. The petitioners, Kashmiri pundits, have approached this Court seeking issuance of directions to the respondent – State and its authorities for protecting and preserving some of their religious places. Their grievance is that uncouth attempts have been made by some locals and non locals to change the status of their religious places into commercial places.

2/ Public Interest Litigation (PIL) was filed before the Hon'ble Supreme Court. The Assistant Registrar of the Supreme Court, vide his communication dated 12-04-2007, informed the petitioners therein that the petition is not covered under PIL guidelines. The petitioners were advised to file proper petition before the concerned High Court for grant of desired relief in the matter.

3/ Another petition (OWP 349/2007) was filed before this Court, which was considered by the Division Bench. On 25-07-2007, the Division Bench permitted the petitioners to withdraw the writ

petition in view of the observations contained in the aforementioned communication dated 12-04-2007.

4/ The petitioners have filed this petition in representative capacity. It is filed by the Kashmiri pundits, who have not migrated from the valley.

5/ Learned counsel for the petitioners submitted that '*secular*' character of Constitution would require the State and its authorities to protect the religious places of petitioners. Learned counsel submitted that some 'Mahants', who in some case are non-kashmiri pundits, have illegally and unauthorisedly created third party interest in properties, which are now being used for commercial purposes. Learned counsel submitted that action, in accordance with law, has to be taken for dealing with 'Mahants', who illegally disposed of properties and religious places have to be protected.

6/ M/s. M.Aijaz and H.Furrahi, appearing for the Applicants, who are seeking impleadment in the writ petition, submitted that writ petition is misconceived and any order, that will be passed, may adversely affect the rights of their clients, as such they shall be afforded opportunity of hearing. Learned counsel further submitted that writ petition is not based on true facts, therefore, it is not maintainable, thus, merits rejection.

7/ The history of Kashmir, which is spread over thousands of years, does, in unequivocal terms, throw up the rich culture of this part of the country. Kashmiri pundits have been living in their home land along with people belonging to other religions for centuries. One of the historical hallmark of Kashmir is mutual respect, affection and tolerance amongst people belonging to different religions, castes and creeds. "**Kashmiriat**" is manifestation of these virtues of all these people. In Kashmir, examples can be cited to

prove these statements. At many places, mosques, temples and shrines of saints are housed in one compound. The father of the nation, after experiencing himself the communal harmony here, declared that he has seen a ray of hope in Kashmir, when the unfortunate events of communal disharmony had engulfed most parts of the Sub Continent. The genes of harmony have transcended through generations in Kashmir.

**8/** Every nations' history does have its black patches. They, however, are over shadowed by the long periods of sun shine and moon shine. The State Government and its authorities are dutybound to redress all the genuine and just grievances of the petitioners. Some laws are already in place in the State of J&K, which can take care of the grievances of the petitioners raised in this writ petition. The respondent – State and its authorities, wherever, complaints/grievances are projected by the petitioner/s, shall consider the same in accordance with law and redress them.

**9/** In normal course, this petition would stand closed with the above stated observations/directions. However, an issue of fundamental and primary importance has cropped up in it. This Court, which is creature of Constitution, cannot afford to give a casual go bye to the fundamental issue projected in this petition. The question raised, has to be debated, considered and earnest and honest effort is to be made to cull out a legal and constitutional answer to it. 'Goeth' has said and I quote, *"What has not been set forth from your own soul shall never refresh you- whatever you can do or dream you can, begin it. Boldness has genius, power and magic in it."*

**10/** This bench, to repay the debt of freedom fighters, whose matchless sacrifices have crystalized into the dawn of independence, has earlier made small efforts to combat the terror of corruption and

unbridled money power. Relevant paragraphs of one such judgement passed in case titled Mohammad Amin versus State and others, reported in 2012 (3) JKJ 89, are taken note of :

*“14.The two Articles read along with other provisions contained in Part III of the Constitution catapults the human being to most important place in this universe. The expression “equality before the law” or “equal protection of law” and the expression “ no person shall be deprived of his life and personal liberty” are the express provisions of the Constitution. The implied rights emerging from these provisions of the Constitution would mean that every person shall have right to live a life which will be meaningful and supported by the State. The “life” cannot be said to be one which has to be lived in an immoral manner. The “implied constitutional rights” does cast a duty on the state and its authorities to provide paraphernalia for dignified living of woman who come from humble surrounding and to provide all kinds of securities to them. State would be further duty bound to provide mechanism and paraphernalia which would enable such members of the society to lead life as respectful human beings. In terms of the ‘implied fundamental rights’ every such citizen of the State has right to seek all kinds of assistance from the state which would ensure that such person does not have to lead immoral life to keep its flesh and blood together. The ‘implied fundamental right’ can be enforced like any other fundamental right by the citizen of the State. The expression ‘life’ appearing in Article 21 of the Constitution of India, would mean, a life which is dignified and which one would live in an honorable manner. The ‘implied fundamental right’ would, thus, cast duty on the state to protect such lives which are endangered by the evil forces of the society and which are facing a threat of leading immoral life or which are forced by the circumstances to lead immoral life. Human life has to be honorable and dignified. The state is, thus, duty bound to create avenues for poor and hapless woman for earning their livelihood in a dignified way and to live an honorable life. The State of J&K is further under constitutional obligation in view of the mandate contained in Section 22 of the Constitution of J&K to provide protections to poor and hapless woman and to devise a*

*mechanism which would enable such class of people to earn their livelihood and lead the meaningful and dignified life.*

*15.The court is not oblivious of the fact that providing such kind of protections and facilities depend upon the economic strength of the State. The India is a rich country. Its material resources are immense. When the material resources of the State will be taken care of and dealt with honestly, it would definitely ensure that no person in this country would die because of hunger. The Constitution when followed honestly and in right-earnest will bring back the prosperity to all sections of the society, which otherwise, now we find only in the pages of history.*

*The insatiable human greed has caused irreparable damage to the economic and moral fabric of the society. The unbridled desires of an individual when ride rough shod, create imbalance in the society.*

*The greatest challenge to the body politic is from hydra-headed monster of corruption. The menace of corruption has corroded the basic human values. It has created neo-rich class in the society. Corrupt people are parasites who swell themselves by sucking blood of the poorest of poor. The society gets de-stabilized by abominable corrupt practices indulged in to by black sheep in the society. Major portion of the public funds are siphoned off into coffers of few corrupt people and this in turn has potential of breaking down the economic back bone of the Nation. Corruption is the greatest threat to the democratic institutions. Corrupt practices of small band of people inflict untold and unbearable miseries on the poor and down trodden class of the society. Corruption if unchecked will eventually lead to anarchy in the society.*

*16.To ward off all evil effects of corruption, lawful rule is imperative. It is seen and is of common knowledge that corrupt people throng power centers and with the passage of time take control of them. Of all impending challenges faced by the society, corruption is the serious one. Corruption is mother of all evils. Earning tons of money, amassing huge wealth at the cost of the poor, is a beastly instinct. The malice of corruption has afflicted the every organ of the society. The experience has shown that corrupt people survive because of active support they get from the people who are put in important positions of trust. The corruption has engulfed the society like wild fire. The corruption has*

*potential of destroying all the democratic institutions. The monster of corruption if not taken head-on, will in the near future convert the society governed by rule of law into the society governed by rule of "Jungle". Those, who are holding the possession of trust for public good, if would continue to facilitate the corrupt activities, in the near future will themselves get consumed as the monster of corruption will not spare them also.*

*17. Despite the people's support being at the back of the state, the corruption is continuously increasing. Some drastic measures are to be taken for arresting the spread of corruption. The people who are arrested for having violated the Provisions of Prevention of Corruption Act, are mostly acquitted of the charges. The primary and fundamental reason is that in this state at present there are only two Principles courts and two Additional courts dealing with the cases of the corruption. The huge pendency of these cases on the files of these courts is cause of enormous delay in the disposal of such cases and resultantly the accused are the only beneficiary of the delayed disposal of cases. By the time a case reaches to the stage of leading evidence, most of the prosecution witnesses lose interest in the case, and some of them are not available for whatsoever reason.*

*18. There is another cause for acquittal of the accused viz the offence under P.C Act may be committed at a far of place say Belaisa of District Doda. The witnesses would be from that place. The trial is conducted at Jammu. The witnesses mostly choose not to appear before the trial court as they have to cover a huge distance from a distant hilly area which is cumbersome also. Assume that a witness from such distant place does appear before the trial court at Jammu and for any reasons his statement is not recorded, he gets dis-interested and it is accused only who is benefited. Likewise if offence under the prevention of Corruption Act is committed at Karna or any other distant place of Kupwara District or at a distant place of Anantnag District or any other District of the valley, trial of the case is to be conducted at Srinagar. For the afore-stated reasons the accused is only person who gets benefited as prosecution witnesses mostly do not appear before the courts as they have to cover lot of distance from their home place to the place where the courts are located. The acquittal of the accused in these circumstances has the affect of encouraging corruption in*

*the society. The very idea of being convicted and sentenced within reasonable time alone can prevent and deter the people to indulge in corrupt practices.*

*The corruption is denuding the poor and hapless women of the state, the support which they are to be, otherwise, provided.*

*19. The state is under constitutional obligation to provide a corruption free society. In order to attain such goal necessary paraphernalia has to be created and provided to people of the State. The state is duty bound to create more courts for exclusively dealing with the offences punishable under the Prevention of Corruption Act, SVT.2006(1949 A.D) (for short Act of 2006). In one of the cases this court had directed the respondent-state to confer powers under Act of 2006 on the courts of Additional District Judges in the State of J&K other than the courts of Additional District and Sessions Judge in Jammu and Srinagar Districts.”*

**11/** The directions, in the aforesaid decision, have been issued for amending provisions of the Jammu & Kashmir Prevention of Corruption Act 2006, for conferring powers under the said Act on all the Courts of Additional District Judges in the State of J&K excepting district of Srinagar and Jammu. The directions have also been issued for identifying the women, who are living below poverty line, so that the State is, ultimately, directed to alleviate their sufferings. These directions have been treated as petition, and in pursuance of the orders of the Hon’ble Chief Justice, the Division Bench of this Court is monitoring implementation of the directions.

**12/** The State Government, while implementing the judgement, has conferred powers on the Additional District Judges under the Jammu & Kashmir Prevention of Corruption Act 2006. For amending the Jammu & Kashmir Prevention of Corruption Act, a high level Committee, headed by the Chief Secretary of the State, has been constituted. District Commissioners of all the districts of the State of J&K have almost completed exercise of collection of

data in respect of women, who are living below poverty line. All these efforts are being made by this Court to eradicate the menace of corruption from the society and to fast track the trial of corruption cases.

**13/** This bench, in yet another case, has also dealt with the lethal effect of unbridled money power. Observations were made for taking steps for controlling the money power. In a bunch of writ petitions with lead case titled VIOM Networks limited and others versus State of J&K and another reported in 2012(1) JKJ 11, this bench has observed as under :

*“23. Our country is possessed of immense human and material/natural resources. ‘We the people’ are masters and have to be beneficiaries of these natural resources. The occupation of this country by external rulers has drained it of most of its material/natural resources. This country which has history of thousands of years, at the mid night, when it was declared to be free and independent country, inherited body politic which was suffering from many maladies. The subjugation of centuries had reduced a vast majority of its population to abject poverty. The external aggressors and rulers had ruthlessly exploited the material/natural resources of this rich country. The majority of the population at the dawn of freedom of the country was very poor and it was very difficult for them to make the both ends meet. The Constitution makers who were great visionaries, in order to bridge the huge yawning gap between poor and the rich and in order to ensure that the basic necessities of life become affordable to every citizen of this country, made solemn declaration to secure justice, social, economic and political to its citizens.*

*24. For variety of reasons, a section of population got catapulted to an advantageous position and the vast majority suffered all kinds of deprivations. The class of people who were and are on the right side of the advantages, went on flexing their economic muscles to make huge money/economic empires. The already deprived class of the society became victim of actions of their own people. The people in*



democratic society like ours are sovereign and all types of resources which are available in this country, thus, are property of people of this country. The people of this country are Masters of all natural/material resources. A group of people because of their advantageous position and even capacities and abilities exploited these material/natural resources which are owned by the people of this country and have consequently build great money/economic empires. The Government which represents the will of the people in our Constitutional Scheme is deemed to be in control of all the material/natural resources available in this country. These material/natural resources are to be utilized in a manner by the State and its authorities which will ensure in achieving the goal of securing social and economic justice as enshrined in the preamble of the Constitution to all its citizens. The class of the people who have become affluent and rich have definitely right to retain the fruits of their labour but in a manner which suits our Constitution designed and engineered by its architects to create a socialist State. The Constitutional bodies and Constitutional authorities owe a duty to the people of this country to unveil humanist ideology of the Constitution of which preamble is repository and its vivid colours are painted strikingly by the constitutional painters in Article 38 and 39 thereof. The justice which is social and economic in all its contours will be achieved only when it is ensured that every individual of this country gets the basic necessities of life and the void between haves and have nots does not become unbridgeable. An exercise is to be undertaken to level down and level up two classes of the society so as to ensure that Clement Itlay's Prophecy **"if a free society cannot help the many who are poor, it cannot save the few who are rich"** does not become true. The soul of our constitution is socialist in nature. Pt. Jawahar Lal Nehru said, **"I see no way of ending poverty, the vast unemployment, the degradation and the subjection of Indian people except through socialism."**

25. The State in our Constitutional Scheme in order to ameliorate the lot of suffering masses has sovereign power to levy tax on those who are on the advantageous position and who have build huge economic empires by exploiting material/natural resources of this country. The taxes are being exacted for the public good. The imposition of tax belongs to sovereign power of the State and levying thereof is authorized by the Constitution of this Country. The exaction

*of the tax in the social, economic and political backdrop of our country has to be looked upon favourably. The people who belong to a habitation are required to create certain facilities for themselves. In a democratic country like ours, since the Government is put in place to provide these facilities, the people who are able and in a position to pay, have to be levied with taxes. No Government can run without taxes being imposed on that section of the population which is able to pay.*

*26. The issue is to be looked at from another stand point as well. In our Constitutional Scheme representatives of the people ultimately form the Government and are answerable to the people in accordance with the mandate of Constitution of India and laws made thereunder. Governments are accountable and answerable for their every act to the people of the country. In contradistinction thereto, those who wield money or economic power are not answerable and accountable in the like manner. In the recent times value system has completely changed. The money power has taken control of almost all other public institutions. In present times people can be grouped by and large into two main classes viz. **'human beings'** and **'commercial beings'**. The events have unfolded and unveiled the ugly facts and facets which have shown that money power is affecting the political power of the State. The state has to wake up and respond to these ringing alarms by making laws which would effectively control the money power/economic power and make it more answerable and accountable. The unbridled economic power has potential to destabilize the political order of the State. If the necessary checks and breaks are not put on the economic/money power, vast majority of the people will become poor and poorer. The people who suffer at the cruel hands of the deprivation, it is seen are, either committing suicide or joining outlawed groups. The State has to distribute the natural resources for overall good of society. The State in order to secure the Constitutional goal of having a socialist society has to necessarily have absolute control on the natural resources of this country".*

**14/** India is an ancient land. Like its various rivers, different races, which have come from different directions and from different areas, have converged in this land. This land is not only confluence of great rivers but also of great civilizations. This land has been

inhabited by great civilizations. It has been ruled by Hindu Kings, Muslim Kings and even by Christians. India, in its history, did not exist as one single entity in the manner it exists in post constitutional era. Pre constitutional history of India reveals that some times it was one single entity, ruled by one King and in other times, it was converted into many independent Countries/States/Principalities and was accordingly ruled by their own rulers.

**15/** The subjugation of people of this land by British Empire put the inhabitants of this land to untold miseries. This land was denuded of most of its natural and material resources. Majority of people of this country were made to live in abject poverty. In order to extricate themselves from the shackles of slavery, the people inhabiting this land, belonging to different faiths, colours, castes, descents and creeds, launched independence movement. It is this movement, which fused all these otherwise heterogeneous components into one nation. From the bosom of freedom struggle, which struggle, as already stated, had fused the people of all shades into one nation, was born a country named India. It is the huge sacrifices of the people, who constituted one nation, who gave to themselves the Constitution. The Constitution created the State called India. India, thus, became the land of the people, who belonged to different religious denominations, faiths, castes, colours and who were and are having their own different cultures. It is these people, who, in the Constitution, called themselves, **“We the people of India”** and solemnly resolved to constitute India into a sovereign, democratic republic. It is further resolved to secure to its citizens ; justice ; social, economic and political ; liberty of thought, expression, belief, faith and worship ; equality of status and of opportunity ; and

promote among them fraternity and assuring the dignity of individual and unity of the nation. The preamble of the Constitution of India was substituted by Constitution (42<sup>nd</sup> amendment) Act 1976. In terms of section (2) of the Act of 1976, expression **“Sovereign Democratic Republic”** was substituted by the expression **“Sovereign, Socialist, Secular, Democratic Republic”** and in the fraternity part of the preamble of the Constitution, the expression **“Unity of the Nation”** was substituted by **“Unity and Integrity of the Nation”**.

**16/** The very scheme of the constitutional provisions would show that **“We the people”** constituted India as a country, which guarantees equality before law and equal protection of laws and prohibit discrimination on the grounds of religion, race, caste, sex or place of birth and also provide equality of opportunity in the matters of public employment for all the citizens and it is provided that no citizen shall, on the ground only of religion, race, caste or sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against, in respect of any employment or office under the State. The protection is accorded to all the citizens’ to the right to freedom of speech and expression ; to assemble peacefully and without arms ; to form associations or unions ; to move freely through out the territory of India ; to reside and settle in any part of India ; to practice or to carry on any profession, trade or business. These are the promises, which constitute some of the fundamental rights contained in Part III of the Constitution of India in terms of its articles 14, 15, 16, 17, 18 and 19. Article 20 thereof also refers to the expression *“no person”* and not to a Hindu, Muslim, Sikh , Christian etc. and article 21 also provides that *“no person shall be deprived of his life or personal liberty except in accordance with the*

*procedure established by law.*” Similarly, other provisions of the Constitution, more particularly, appearing in Part III thereof, refer to the person and/or citizen. Article 25 guarantees freedom of conscience and free profession, practice and propogation of religion to all persons. The said provision of the Constitution provides that all person are equally entitled to the aforementioned guarantees. Article 26 of the Constitution guarantees to all its citizens freedom to manage religious affairs. Article 27 provides that “*no person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated for payment of expenses for promotion or maintenance of any particular religion or religious denomination.*” Article 28(1) provides “*no religious instruction shall be provided in any educational Institution wholly maintained out of State funds.*” Article 28(3) provides “*no person attending any educational Institution, recognized by the State or receiving aid out of State funds, shall be required to take part in any religious instruction that may be imparted in such Institution or to attend any religious worship that may be conducted in such Institution or in any premises attached thereto unless such person or if such person is a minor, his guardian has given his consent thereto.*” Article 29 provides protection of interests of minorities. Article 29(1) provides “*any section of citizens residing in the territory of India or in any part thereof, having a distinct language, script or culture of its own, shall have a right to conserve the same.*” Article 29(2) provides “*no citizen shall be denied admission to any educational Institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.*” Article 30 guarantees the rights of minorities, whether based on religion or language, to establish or administer educational

Institutions. The Constitution makers, by their great efforts, vision and wisdom, have chiseled a constitutional person called **“Indian”**, irrespective of his/her belonging to any religion, faith, caste, colour or creed.

**17/** The aforesaid constitutional provisions, with the preamble in its original form, viz. when it was originally declared, **“We the people of India”** having solemnly resolved to constitute India into a “sovereign democratic republic” provide complete evidence that India was constituted into a country having no State religion. The constitutional provisions, reference whereof is made hereinabove, treat all persons/citizens as one single unit. **“We the people”** who gave Constitution to themselves, conferred themselves only status of being citizens of India, in other words, called as **“INDIANS”**. The *“Indians”* in view of the aforementioned provisions, have to be given uniform treatment and cannot be subjected to discrimination on the ground of religion, race, place of birth or descent. An inbuilt mechanism is made to guarantee *“Indians”* right to profess their religion and faith. They have been given freedom to establish their Institutions. India, as already stated, was inhabited by people who came from distant and different areas and belonged to different races, cultures, religions and faiths and settled in the land, now called *“India”*. In order to hold together this heterogeneous conglomerate of people, the Constitution was conceived to protect the interests of cross sections of society and was delivered in a manner so as to sustain it for all times to come.

**18/** **“India”** owes its existence to the Constitution, which **“We the people”** have given to ourselves. **“We the people”** have catapulted ourselves to glorious heights by providing a road map in the shape of the Constitution to reach to the pinnacle of moral,

material and physical development. The Constitution of India, which **“We the people”** have given to ourselves, has guaranteed to the **“Indians”** belonging to the different religious denominations, faiths, castes, linguistic and cultural groups to follow the ideals of their lives. The Constitution of India, on the day it was adopted by **“We the people”**, thus, declared the people and citizens of this country as ‘one entity’, called **“Indians”**. 42<sup>nd</sup> amendment of the Constitution, by which the preamble of the Constitution was substituted and expressions **“secularism and socialism”** added thereto, it appears has been done only to further clarify the already existing constitutional position, in as much as, the provisions of Constitution do not discriminate between the citizens, who belong to different religions, castes, creeds as also on their places of birth.

**19/** In our constitutional scheme, a citizen of India is only an **“INDIAN”**. No person can claim himself to be a *“Hindu nationalist, Muslim nationalist, Sikh nationalist, Buddhist nationalist or Christian nationalist.”* The constitutional provisions, mention of some of which has been made in this order, does, in loud, clear and unambiguous terms, forbid using of such expression/s. A person, who persists with use of such expression/s and, in fact, believes in such a thought, has to be dealt with and proceeded against in accordance with the mandate contained in the Constitution and other laws of the land. As already stated, India belongs to **“Indians”**, who constitute one nation. Constitution of India does not recognize *“Hindu nationalism, Muslim nationalism, Sikh nationalism, Buddhist nationalism or Christian nationalism.”* These expressions denote that there is a *“Hindu nation, Muslim nation, Sikh nation, Buddhist nation or Christian nation”*. These expressions or thoughts are antithesis and abhorrent to the Constitution of India. The

Constitution, as already stated, has created one nation called **“India”**. In our constitutional philosophy, there is only one **“ism”** that is **“Indianism”**. All other **“isms”** are sworn enemies of **“Indianism”**. Any person claiming to be *“Hindu nationalist, Muslim nationalist, Sikh nationalist, Buddhist nationalist or Christian nationalist”* is not only working against the **“Indianism”** but against the very thought of India. In India, there can be forces, which can be bracketed into two groups only, **“Indians”**, who are for India and **“communals/extremists”**, who are enemies of India. If India, which is created by its Constitution, which **“we the people”** have given to ourselves, has to survive, then it is only **“Indianism”**, which has to be there and all other **“isms”** have to disappear from the firmament of the country called India.

20/ It appears that in terms of Constitution of India, which guarantees all the rights, which include right to practice and profess ones religion and faith, there was no requirement of bringing in expression **“secularism”** in the preamble of the Constitution. This expression has evoked sharp reaction from a section of population and divided people of the country into different pigeon holes of different **“isms”**. A very serious and potential threat is posed to the very existence of the idea of India by the fringe elements, who take cover under various types of **“isms”** other than **“Indianism”**. India is not a Hindu, Muslim, Sikh, Buddhist or Christian India. It is **“India”**, which is born from the bosom of unrelenting struggle of millions of people, who, as already stated, were subjected to untold sufferings and miseries by external aggressors. India is a land, which is not only inhabited by people belonging to different religions, faiths, colours, castes and creeds but it also has different geographical dimensions and constraints. This heterogeneous



conglomerate is and will be held together by one theme and one concept of being one nation called ***“India”***, which is born from the bosom of Constitution.

**21/** The Constitution has created State called ***“India”***. The State comprises of different organs, viz. Executive, Legislature and Judiciary. Each organ of the State has to perform its constitutional duties within the boundaries delineated by the Constitution itself. When the Constitution itself is threatened, which, in turn, poses potential threat to the very existence of State, then the organs thereof cannot display ostrich syndrome but have to stand up and perform their constitutional duties and obligations so as to ensure that the Constitution and the State created by it, does survive. It is this constitutional obligation, which has impelled upon the conscience of constitutional Court to perform its constitutional duties.

**22/** The concept of ***“Indianism”*** is the soul of the Constitution. All other ***“isms”***, in essence, pose potential threat to the soul as well as conscience of the Constitution. ***“India”*** and ***“Indians”*** are unique in the whole world as they resemble to different colours of a bright rainbow.

**23/** In the aforementioned backdrop, a question of fundamental importance arises. Can any person/s or any organization/s be permitted to create and carve out a constituency on religious plank, when ***“we the people”*** have not provided any scope of the like nature in the Constitution. Now if any person/s or organization/s make/s efforts to create and carve out space for itself on the basis of religion to capture political power, when same is not permissible by the Constitution, then is it not the duty of those, who have taken oath under the Constitution of India to uphold the same by halting such person/s and organization/s in their tracks, lest they preside over the

disintegration and dismemberment of this great country called ***“India”***.

**24/** Freedom of expression guaranteed by the Constitution of India is not absolute. It is said that, in fact, no virtue is absolute. The rights are guaranteed under the Constitution and the citizens are also under constitutional obligation to perform their fundamental duties. Article 51 (A)(a) of the Constitution provides that it shall be the duty of every citizen of India ***“to abide by Constitution and respect its ideals and institutions, the national flag and national anthem.”***

The Constitution of India, in express terms, prohibits polarization of people on the grounds of religion, race, caste, creed or descent. Besides, it being a constitutional duty of the authorities, who are at the helm of affairs, to ensure that India stands as one unit, it is the duty of the citizens also to abide by the constitutional provisions. The collective conscience of the nation vouchsafes for India, which ***“we the people”*** have given to ourselves in terms of Constitution of India. The Constitution of India is not written by the ink but by the blood of ***“we the people”***. Ours is a constitutional State. The provisions of Constitution of India do not say that the President, Vice President or Prime Minister of the country should belong to any particular religious denomination. Any citizen of this country can hold such post in accordance with the mandate contained in the Constitution. Any effort to occupy any such post in cruel defiance of the Constitutional provisions has to be stopped.

**25/** How to stop the defacement of the Constitution and occupation of the highest constitutional post(s) in violation of constitutional mandate, would require to be answered now.

**26/** The Constitution, which is given by the people to themselves and has created the State called ***“India”***, which State comprises of

three principal organs, viz. Executive, Legislature and Judiciary, the affairs thereof are to be conducted in accordance with the spirit and mandate of the Constitution itself. The discussion made in this order would show that the ***'State has no religion.'*** Thus, no office in the State can be occupied by any person and no Legislative Body can be controlled by any organization by invoking the mandate of the people on the basis of religion. Person/s and organization/s, who does not believe in the Constitution of India, by using extra constitutional methods, cannot be permitted to occupy the high constitutional/political Offices and/or Legislative Bodies. Article 356 of the Constitution of India provides that the President, on receipt of report from the Governor of a State or otherwise if he is satisfied that a situation has arisen, in which the Government of a State cannot be carried in accordance with the provisions of the Constitution, he, by issuance of Proclamation, may assume unto himself all or any function/s of the Government of the State and all or any powers vested in or exercisable by the Governor or anybody or authority in the State other than the Legislature of the State ; can declare that the power of Legislature of the State shall be exercisable by or under the authority of the Parliament. The President's further power is to make such incidental and consequential provisions as appear to him to be necessary or desirable for giving effect to the objects of the Proclamation, goes a long way to show that the Government, in all circumstances, has to be carried in accordance with the provisions of the Constitution. Thus, any person/s and organization/s can assume any constitutional Office and/or secure berth in Legislative Body only when such person/s and organization/s believes in and conducts its affairs strictly in accordance with the mandate contained in the Constitution. If any person/s and

organization/s, in the process of securing high constitutional Office or place in the Legislative Bodies, act in cruel disregard to the constitutional mandate, then the constitutional and statutory authorities have to take steps in accordance with the laws of the land to stop the forward progress of such people. Besides these authorities, the Election Commissioner of India, in terms of article 324, is under constitutional obligation to ensure that person/s and organization/s, who, practice and profess their thoughts, which are outside the purview of Constitution and which constitute potential threat to it, are halted in their tracks in the manner which not only secures but safeguards the unity of India. The Election Commissioner of India, besides taking recourse to the provisions of Representation of Peoples Act can also issue administrative instructions in this behalf.

**27/** For the reasons recorded hereinabove, following directions are issued :

*“a) Besides all the constitutional and statutory authorities, Union of India, through Home Secretary, is directed to consider and ensure that all person/s and organization/s, who attempt to subvert the Constitution of India, are stopped in their tracks by taking recourse to the provisions of law ;*

*b) Chief Election Commissioner of India is directed to invoke the provisions of law including that of Representation of Peoples Act against the person/s and organization/s, whose actions and utterances pose threat to the Constitution of India and ensure that they are prevented from seeking election to the Parliament and State Legislatures. He is further directed to consider for issuance of executive instructions for disqualifying such person/s from contesting elections to the Parliament and State Legislatures and for barring such organization/s ;*

*c) The State of J&K through Chief Secretary is directed to take all required steps in accordance with law for protection of religious places of petitioners and in this process*

*any person(s), who may be affected, shall be afforded opportunity of hearing and thereafter appropriate orders, in accordance with law, be passed ;*

*d) All the constitutional authorities may take all other steps, in accordance with the Constitution of India and Constitution of J&K and laws of the land, for protecting the religious places of petitioners including the places of cultural heritage. The authorities, besides taking appropriate action in terms of the existing laws, may consider to make new laws for accomplishing the aforesaid purpose ;*

*e) All the aforementioned authorities may take all other steps in accordance with the Constitution of India and laws of the land to ensure that the Constitution of India is not directly or indirectly subverted and unity and integrity of India is maintained ;*

*f) Registry to serve copy of this order to all the aforesaid authorities forthwith.”*

**28/ Disposed of along with connected CMPs.**

*TARIQ MOTIA  
SRINAGAR  
09 -10-2013*

*(MUZAFFAR HUSSAIN ATTAR) J*

